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I N D E X

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

SHAWN CHANNELL

By Mr. Callahan:

3

By Mr. Shea:

52

By Mr. Callahan:

117

By Mr. Shea:

121

EXHIBITS

RECEIVED IN EVIDENCE

Government:

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Defense:

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P R O C E E D I N G S

THE CLERK: This is criminal matter 13-11530, United States v. Mahoney. Court is in session. Can counsel please identify themselves for the Court and for the record.

THE COURT: All right, thank you. Call your witness back up.

MR. CALLAHAN: Thank you, your Honor.

MR. SHEA: Good morning, your Honor. Mark Shea for Mr. Mahoney.

MR. CALLAHAN: Shawn Channell.

THE COURT: You're still under oath, sir. And, ideally speaking, you said about 45 minutes, so --

MR. CALLAHAN: I think probably an hour, but I'm going to try to come in under that.

THE COURT: Yes.

MR. CALLAHAN: Yes, yes.

SHAWN CHANNELL

having been previously duly sworn, was examined and testified further as follows:

CONTINUED DIRECT EXAMINATION BY MR. SHEA:

Q. Good morning, Dr. Channell. I think just to get us back to where we broke yesterday, you were describing the basis for your opinion that Mr. Mahoney had Bipolar I disorder, and I think one of the last things you said was your identification of at least two manic episodes that you could recall that

1 supported your conclusion. Can you describe those for me,
2 please.

3 A. Yes. There was the period of time when Dr. Mart was
4 evaluating Mr. Mahoney for his competency to stand trial,
5 during which at two distinct periods of time several months
6 apart he described behavior consistent with mania, and in fact
7 stated specifically that he appeared manic or was quite manic
8 at the time. That was in 2011, 2012, I believe. And then
9 there have been a few incidents that --

10 Q. Before you go on to the next incident, if you look at the
11 binder in front of you, is that Exhibit 107 that you're
12 referring, the description of the manic episode?

13 A. Yes.

14 Q. And can you just tell the Court, who is Dr. Mart? What
15 was he asked to do?

16 A. Dr. Mart was a court-appointed forensic psychologist who
17 was asked to evaluate Mr. Mahoney for competency to stand trial
18 in relation to a charge of failure to register as a sex
19 offender.

20 Q. If you look at Exhibit 107, and I want to focus you on the
21 first paragraph of the first page of that exhibit, can you tell
22 from that whether Dr. Mart had actually met with Mr. Mahoney
23 before giving him the diagnosis that he landed on?

24 (Witness examining document.)

25 A. This is the October 20, 2011?

1 Q. Right, and if you can read just starting at the second
2 sentence of the first paragraph starting with "I previously."

3 A. "I previously saw Mr. Mahoney on 9/23/2011, but I was not
4 able to complete the evaluation at that time. I was able to
5 see him again at the Stratford County House of Corrections on
6 October 14, 2011, and he was willing to cooperate with the
7 assessment."

8 Q. Dr. Mart also notes that prior to conducting the
9 evaluation, he was able to review documents provided to him by
10 Attorney Garrity. Is that Mr. Mahoney's attorney?

11 A. At the time it was, yes.

12 Q. Now, after meeting with Mr. Mahoney and reviewing the
13 documentation that he had, what diagnosis did Dr. Mart offer
14 with respect to Mr. Mahoney?

15 A. I believe it was bipolar disorder otherwise specified or
16 not otherwise specified with psychotic features.

17 Q. Okay. And is that diagnosis identified at Bates No. 132
18 of Exhibit 107?

19 A. Yes, it is.

20 Q. Now, is there a difference between Bipolar I and bipolar
21 not otherwise specified with psychotic features as identified
22 here in Dr. Mart's report?

23 A. Yes, there is a difference.

24 Q. Can you explain it to us.

25 A. Well, Bipolar I disorder identifies that the individual

1 have elevated mood which results in severe impairment and
2 functioning or requires hospitalization, and it lists a number
3 of criteria. There are seven specifically, three of which the
4 individual would need to exhibit in order to meet the
5 diagnostic criteria for the condition; and those things would
6 be things like elevated mood, grandiosity, sleep disturbance,
7 excessive talkativeness, flight of ideas, distractibility.

8 The difference between Bipolar I disorder and bipolar
9 disorder not otherwise specified is that you still have a
10 condition which results in marked impairment, but they may or
11 may not meet all -- they may not meet, for example, three of
12 those diagnostic criteria. They may only meet two, or they may
13 have different types of symptoms. For example, here, psychotic
14 features, he had delusional beliefs at the time, which aren't
15 strictly symptoms of bipolar disorder. So the difference is
16 not one of degree of severity of impairment. The difference is
17 the types of symptoms that the individual is presenting with.

18 Q. Does bipolar not otherwise specified, is that considered a
19 severe mental illness?

20 A. Yes.

21 Q. Now, what about the difference between Bipolar I and
22 Bipolar II?

23 A. There is a significant difference between Bipolar I and
24 Bipolar II.

25 Q. Let me just pause there. Is Bipolar II, in your opinion,

1 a severe --

2 THE COURT: Where are you getting all this from? Is
3 this from the DSM?

4 THE WITNESS: These are the criteria from the DSM-V,
5 yes.

6 THE COURT: Do I have that in the record?

7 MR. CALLAHAN: Your Honor, I'll enter 144.

8 THE COURT: I think that would be worth having. Is
9 that the V, the most recent one, sir?

10 THE WITNESS: Yes. That's the most recent edition.

11 THE COURT: Thank you.

12 Q. What is Exhibit --

13 MR. CALLAHAN: Well, we offer Exhibit 144 in evidence,
14 your Honor.

15 THE COURT: All right.

16 MR. SHEA: Is it DSM-IV or DSM-V?

17 THE COURT: I don't know. I asked that question.

18 Q. I'll ask. What is 144?

19 A. DSM-V.

20 MR. SHEA: So Exhibit 144 is from DSM-V?

21 THE WITNESS: Yes.

22 MR. SHEA: Thank you.

23 (Exhibit 144 received in evidence.)

24 Q. So you had said earlier that the difference between

25 Bipolar I and bipolar NOS was not a matter of severity. Is the

1 difference between Bipolar I and Bipolar II a matter of
2 severity?

3 A. Yes.

4 Q. Bipolar II, in your opinion, is that a severe mental
5 illness?

6 A. No.

7 Q. In his testimony yesterday, what did Dr. Hoffman say about
8 whether or not bipolar not otherwise specified was a severe
9 mental illness?

10 A. His statement was consistent with mine, that it was the
11 same as bipolar disorder. It just didn't meet the criteria
12 for, as I think he termed it, classic Bipolar I disorder.

13 Q. Now, did Dr. Mart in Exhibit 107, in this October, 2011
14 report, did he identify Mr. Mahoney one way or another as being
15 manic?

16 A. Yes. He explicitly stated he was manic.

17 Q. And did you hear Dr. Hoffman read those portions of
18 Dr. Mart's report yesterday during his testimony where Dr. Mart
19 identified Mr. Mahoney as being manic?

20 A. Yes.

21 Q. Did you give this forensic report by Dr. Mart any weight
22 in arriving at your conclusion that Mr. Mahoney had a severe
23 mental illness?

24 A. Yes.

25 Q. Can you explain?

1 A. Well, one of the distinctions between Bipolar I and
2 Bipolar II, if you use this page from DSM-V is probably the
3 easiest way to explain it, Bipolar I is characterized by a
4 history of at least one manic episode. Bipolar II, there can
5 never be a manic episode. Once you've had a manic episode, you
6 can never meet diagnostic criteria for Bipolar II disorder.
7 Bipolar II disorder is characterized only by a history of
8 depressive episodes and hypomanic episodes. And hypomanic
9 episodes, while similar to a manic episode, are in no way as
10 severe or cause the degree of impairment that a manic episode
11 does. So the reason I would apply weight to Dr. Mart's opinion
12 is because the fact that he offered the opinion that
13 Mr. Mahoney was manic provides evidence of at least one manic
14 episode. Therefore, a conclusion of diagnosing Bipolar II
15 disorder would be inaccurate or you would need to dismiss
16 Dr. Mart's conclusions.

17 Q. And were there other manic episodes you're aware of
18 besides the one identified here in Dr. Mart's report, 107?

19 A. Yes.

20 Q. Okay, and we'll get to those in a minute. And before we
21 move off Exhibit 107, I'd like to refer you to Bates No. 131.
22 Look at the top of the page. I have it up on the screen here.

23 THE COURT: Well, apart from Dr. Mart, have you also
24 seen manic episodes, or Bureau of Prisons?

25 THE WITNESS: Yes.

1 THE COURT: So they've continued?

2 THE WITNESS: Correct.

3 Q. At the top of Page 131, and I have it on the screen,
4 Dr. Mart writes, "I questioned Mr. Mahoney about his criminal
5 history. He told me that his only felony conviction occurred
6 in 1992 when he was convicted of asking a sixteen-year-old girl
7 for oral sex and served five years in the penitentiary."

8 Do you see that?

9 A. Yes.

10 Q. Are you familiar with his criminal history and records
11 concerning his criminal history?

12 A. Yes.

13 Q. Is that an accurate statement of that conviction?

14 A. Absolutely not.

15 Q. What is this an example of, if anything?

16 A. It's an example of his minimization of his criminal
17 history, his minimization of his history of violence, his lack
18 of insight into his history of violence.

19 Q. And the charge that Mr. Mahoney was convicted of, did it
20 involve any weapons?

21 MR. SHEA: I have some objection to this, Judge,
22 because it --

23 THE COURT: I sustain that. I don't need to go back
24 to 2011 records. We need to move this forward.

25 MR. CALLAHAN: Okay.

1 Q. You talked about manic episodes continuing with Mr. Mahoney.

2 A. Yes.

3 Q. Did you also read the forensic report of Dr. Mart from
4 later in March, 2012?

5 A. Yes.

6 Q. What did that refer to in terms of whether he had seen or
7 observed Mr. Mahoney in a manic episode or not?

8 A. He continued to report that he was in a manic episode at
9 that time.

10 Q. And if you turn to Exhibit 136, is that the March, 2012
11 report that you're referring to?

12 A. Yes.

13 Q. In terms of manic episodes at the Bureau of Prisons, at
14 Devens Medical Center, are you familiar with any manic episodes
15 that occurred there?

16 A. Yes.

17 Q. I want to direct you to Exhibit 110 in the binder in front
18 of you. Do you have that in front of you?

19 A. Yes, I do.

20 Q. What is this?

21 A. This is a clinical encounter note by Mr. Mahoney's
22 treating psychiatrist, Dr. Vikram Kambampati.

23 Q. Dr. Kambampati is a psychiatrist, not a psychologist?

24 A. Yes.

25 Q. Okay. And what does this tell you in terms of whether

1 Mr. Mahoney had been observed being manic at Devens Federal
2 Medical Center?

3 A. Well, his assessment is "Bipolar I disorder, currently
4 manic with associated hostility, impulsivity, and potentially
5 dangerous behavior." So what that tells me is, he, in his
6 opinion, he was currently manic at that moment that he
7 interviewed him, met with him.

8 Q. And that instance is something he describes under the
9 "Subjective" heading there in Exhibit 110?

10 A. Yes.

11 MR. SHEA: What's the Bates number?

12 MR. CALLAHAN: 632.

13 Q. Dr. Kambampati, at this time, was he part of Mr. Mahoney's
14 treatment team?

15 A. No. He's no longer with the Bureau of Prisons.

16 Q. At the that he wrote this, was he part of the treatment
17 team?

18 A. Yes. He was his treating psychiatrist.

19 Q. So in his role as a treating psychiatrist, would he be
20 interacting with Mr. Mahoney?

21 A. Yes.

22 Q. How frequently?

23 A. More likely than not, every week.

24 Q. What significance does this treatment note, Exhibit 110,
25 hold for you in your assessment of Mr. Mahoney as being

1 Bipolar I?

2 A. Well, again, this is now a second incidence of a manic
3 episode, so the importance is exactly the same, but it is
4 further evidence that he has had at least one manic episode.
5 In fact, he's had at this point at least two manic episodes.

6 Q. There was some testimony yesterday from Dr. Hoffman about
7 having a manic episode that lasts one week. Do you recall that
8 testimony?

9 A. Yes.

10 Q. Is that a requirement of Bipolar I?

11 A. No.

12 Q. Can you explain.

13 A. If you look again at the reference you provided from
14 DSM-V --

15 Q. Is that Exhibit 144?

16 A. Yes -- under "Manic episode, Criteria A," it says "A
17 distinct period of abnormality and persistently elevated,
18 expansive, or irritable mood, and abnormally and persistently
19 increased goal-directed activity or energy lasting at least one
20 week and present most of the day, nearly every day, or any
21 duration if hospitalization is necessary."

22 Q. So what does that last clause mean?

23 A. That means, if someone has to be in a hospital, placed in
24 a hospital inpatient setting as a result of their manic
25 episode, even for one day, it qualifies as a manic episode.

1 Q. Was Mr. Mahoney --

2 MR. SHEA: Objection because this is --

3 MR. CALLAHAN: Go ahead.

4 MR. SHEA: Respectfully, this is a mischaracterization.
5 He's at this point, at least both times that I'm aware that
6 he's referring to, quote, "manic episodes" to try and get
7 around the one week thing here is competency evaluation where
8 the question of his competency --

9 MR. CALLAHAN: Objection, your Honor.

10 MR. SHEA: -- is at issue. And so --

11 THE COURT: I tell you what, cross-examine him on that
12 point.

13 Q. So, Dr. Channell, as to the week-long duration that
14 Dr. Hoffman was identifying yesterday, that is not a
15 requirement of a Bipolar I diagnosis?

16 A. No, it isn't.

17 Q. And if you were to identify a week-long manic episode, do
18 you have to observe the subject for one entire week from
19 beginning to end 168 days?

20 A. No. As it indicates here, it's present most of the day
21 nearly every day. It doesn't even have to be present every
22 day.

23 THE COURT: Well, let me ask you this: Is there any
24 evidence in the record of it lasting one week?

25 THE WITNESS: Yes. Both the examples that I've

1 previously discussed lasted more than a week. In fact, they
2 lasted several weeks.

3 Q. So I'd like you to turn now to Exhibit 111?

4 THE COURT: Let me just ask you, if it didn't last for
5 one week, would it still qualify under the NOS?

6 THE WITNESS: Yes. And at Devens it would also
7 qualify under the fact he required hospitalization. He had to
8 be moved from an open housing unit to a locked inpatient unit
9 in order to provide for his own safety and the safety of
10 others.

11 THE COURT: When?

12 THE WITNESS: This would have been in 2012, the
13 Dr. Kambampati note.

14 MR. SHEA: I --

15 THE COURT: You know, cross him on it.

16 MR. SHEA: Okay.

17 Q. So looking at Exhibit 111, if you don't have that in front
18 of you, it's on the screen. What is Exhibit 111?

19 A. This is another note from Dr. Kambampati dated February,
20 2013.

21 Q. And right underneath the date it says -- can you read what
22 it says? It says "Psychiatry follow-up"?

23 A. Yes.

24 Q. And it says "Encounter performed at special housing unit."
25 What does that refer to?

1 A. That's -- technically it's called N-1 at FMC Devens, and
2 that is our inpatient, our secure inpatient mental health unit.

3 Q. Okay, is that the unit that you were just describing to
4 Judge Saris?

5 A. Yes.

6 Q. And that's where he was at the time of this treatment note
7 in February, 2013?

8 A. Yes.

9 Q. And under "Assessment," what does Dr. Kambampati say about
10 Mr. Mahoney?

11 A. "Bipolar I disorder: Currently has hypomanic symptoms of
12 tangentiality, impulsivity, worsening."

13 Q. Did you observe Mr. Mahoney at Devens between these two
14 treatment notes, October, 2012, and February, 2013, or at least
15 between this period of time?

16 A. Yes.

17 Q. What did you observe in regards to whether or not
18 Mr. Mahoney appeared manic?

19 A. I observed behavior which was consistent with mania, the
20 same symptoms that Dr. Kambampati noted.

21 MR. SHEA: Again, I know you're going to say "cross,"
22 and I will, but I object because Kambampati's note that was
23 just referenced, which is Exhibit 111, I believe, says
24 "hypomania." We have seen from the DSM --

25 THE COURT: You know, I tell you what --

1 MR. CALLAHAN: Objection.

2 THE COURT: -- cross on it. I mean, if you want to
3 rebut him every point, we'll never finish. Cross him on it.

4 MR. SHEA: Well, frankly, it's very close to
5 perjurious.

6 THE COURT: Well, let me ask you this: Are you
7 challenging that Mr. Mahoney has Bipolar I or bipolar not
8 otherwise specified?

9 MR. SHEA: I am going to challenge that.

10 THE COURT: Yes, so he has the right to establish it.

11 MR. SHEA: But he also has to stick by his own --
12 DSM-V, he just introduced Exhibit --

13 THE COURT: You know what? Overruled. Cross, argue
14 on it. I need to finish this.

15 Q. Dr. Channell, in your time at Devens observing
16 Mr. Mahoney, did you see any shorter manic episodes?

17 A. Yes.

18 Q. Can you describe those.

19 A. He's had multiple episodes where he has had to be
20 transferred to the inpatient unit because of threatening,
21 aggressive, violent, disruptive behavior.

22 MR. SHEA: Objection as that being the basis.

23 THE COURT: Overruled, overruled.

24 Q. Besides you, Dr. Channell, have there been any other
25 clinicians who previously offered the opinion that Mr. Mahoney

1 suffers from Bipolar I or bipolar not otherwise specified?

2 A. Yes.

3 Q. Can you describe who.

4 A. Well, Avis Goodwin back in 2010, Dr. Kambampati who we've
5 just mentioned in 2012; his treating psychologist,
6 Dr. Beaulieu, in 2013; Dr. Tillbrook and Dr. Kissin in 2015;
7 and Dr. Tillbrook again this year.

8 Q. And who is Dr. Tillbrook?

9 MR. SHEA: Just a point of clarification: Those are
10 psychologists, not medical --

11 MR. CALLAHAN: Your Honor --

12 Q. Dr. Kambampati, he's not a psychologist, correct?

13 A. That's correct.

14 Q. And you talked about Dr. Mart. Is he another clinician
15 who's identified Mr. Mahoney as suffering from bipolar NOS?

16 A. Well, you had asked me about Bipolar I. There are a
17 number of people who have diagnosed him with bipolar NOS, and
18 that was MCI Concord in 2009, Dr. Mart in 2011, Stratford
19 County jail, his current treating psychologist, Dr. Gorham.

20 Q. In total, how many clinicians is that who have identified
21 Mr. Mahoney as having -- well, actually, let me step back for a
22 minute. Did you also listen to the testimony of Dr. Kriegman,
23 who is Mr. Mahoney's expert in the 2014 commitment hearing?

24 A. Yes.

25 Q. Do you recall what Dr. Kriegman's opinion was with respect

1 to whether Mr. Mahoney suffered from a mental illness?

2 MR. SHEA: Objection. I have objections to all of
3 these other opinions being entered through this expert. If
4 they want to call these people --

5 THE COURT: Overruled.

6 I did double-check, by the way. The Rules of Evidence
7 don't apply to the competency hearings. But even beyond that,
8 he's relying on other psychiatrists. He's allowed to do that
9 as an expert.

10 Q. Could I ask you to turn to Exhibit 114 in your binder.

11 A. Is it all right if I just look off the ELMO?

12 Q. Oh, sure, sure. I'd like you to read --

13 MR. SHEA: Because I was meaning to object to
14 Kriegman's testimony being allowed in. I understand the Rules
15 of Evidence don't apply, but I do think --

16 THE COURT: Overruled.

17 MR. SHEA: Well, can I be heard?

18 THE COURT: No, because we need to finish this. You
19 can cross-examine.

20 MR. SHEA: No, but this is on a different issue.

21 THE COURT: What's the issue? What's the issue?

22 MR. SHEA: Well, meaning if I -- Mr. Schneider
23 represented Mr. Mahoney at the prior hearing, and he made
24 tactical decisions, and he chose to call Dr. Kriegman.

25 THE COURT: Right.

1 MR. SHEA: It seems to -- I've never been in a
2 situation where it's like going to trial a second time and I'm
3 being bound by the strategic decisions of the prior lawyer.
4 It's not what -- Mr. Mahoney I think --

5 THE COURT: Okay, let me make it clear. You're not
6 bound by it, but you're trying to basically argue that he
7 doesn't have a major mental disease or defect based on the
8 testimony of Dr. Hoffman. Fair enough. But they're allowed to
9 re-buttress their point if they believe he still has a major
10 mental health issue. And Dr. Kriegman, who examined him
11 actually, right, and was the defense, is part of that record,
12 so overruled. You're not bound by it. It's not like
13 collateral estoppel or judicial estoppel. It's just it's part
14 of the record.

15 MR. SHEA: Right, but it's not subject to
16 cross-examination by me.

17 THE COURT: Overruled. You know, Dr. Hoffman relied
18 on all these records. They rely on records. So that's the
19 way -- experts rely on other qualified people. Dr. Kriegman is
20 a psychiatrist, right?

21 THE WITNESS: Yes.

22 MR. SHEA: He's a psychologist.

23 THE WITNESS: He is a psychiatrist.

24 THE COURT: He's a psychiatrist? Yes. I mean, so
25 you're allowed to look at other professionals and see what they

1 thought over time. If you're not challenging the bipolar
2 diagnosis, then we'd be in a different place, but you are.

3 MR. SHEA: Well, the level of bipolar, at least,
4 because the only institution called him Bipolar II, which he's
5 just testified doesn't qualifies as a major mental illness.
6 And --

7 THE COURT: You know what? We'll never finish.
8 You're going to be here all next week, all next week.

9 Q. Dr. Channell, so I think if you want to look on the screen
10 here, this is the testimony of Dr. Kriegman, Exhibit 114. Can
11 you read the question and answer beginning on Line 20 at the
12 bottom of Page 31 of that transcript.

13 A. "Question by Mr. Schneider: Just to clarify with respect
14 to the issue of diagnosis, are you in agreement with
15 Dr. Channell that Mr. Mahoney suffers from bipolar? Answer: I
16 think he fits the diagnostic criteria."

17 You'd like to me to continue?

18 Q. Yes, please.

19 A. "You could also diagnose him as hyperactive or even
20 narcissistic personality disorder or even borderline
21 personality disorder, but the best diagnosis would be probably
22 bipolar, and it's the most common one in the record, so I go
23 with that."

24 Q. And had Dr. Kriegman met with Mr. Mahoney before offering
25 this?

1 A. Yes.

2 Q. Had Dr. Kriegman also reviewed Bureau of Prisons' records,
3 according to his testimony, before arriving on this conclusion?

4 A. Yes.

5 Q. I just want to ask you for a moment about Dr. Kissin.
6 Mr. Shea pointed out yesterday that Dr. Kissin had provided a
7 diagnosis back in 2011 of Bipolar II.

8 THE COURT: Did he specify Bipolar I or Bipolar II?

9 THE WITNESS: No, he did not.

10 Q. Dr. Kissin, Mr. Shea had referred to Dr. Kissin offering a
11 diagnosis in July, 2011, of Bipolar II. Do you recall that
12 yesterday?

13 A. Yes.

14 Q. Do you know at some point in time if Dr. Kissin's opinion
15 with respect to Mr. Mahoney's diagnosis changed?

16 A. Yes, it did.

17 Q. And can you describe that.

18 A. She concurred with the diagnosis of Bipolar I disorder
19 when we risk paneled him in 2015.

20 Q. And is that risk panel, is that Exhibit 103 in front of
21 you?

22 A. Yes.

23 Q. And you talked a little bit about this yesterday, but her
24 name is on the back page of this report. What does that
25 indicate?

1 A. That indicates she was part of the risk panel and agreed
2 with the conclusions and diagnoses in this report.

3 Q. And what happens if a member of the risk panel actually
4 disagrees with something in the report?

5 A. It would be noted in the report.

6 Q. Was it noted in this report, the November, 2015 risk
7 assessment report that's Exhibit 103?

8 A. No. She didn't disagree with the diagnosis.

9 Q. And in between the time she arrived at her first diagnosis
10 of Bipolar II in 2011 and her more recent diagnosis of
11 Bipolar I in 2015, had she had additional time to speak with
12 and talk to Mr. Mahoney?

13 MR. SHEA: Objection. Now, this is --

14 THE COURT: Sustained.

15 MR. SHEA: Thank you.

16 Q. Did you ever see Dr. Kissin with Mr. Mahoney between 2011
17 and 2015?

18 A. During the risk panel interviews, yes.

19 Q. She participated in those?

20 A. Yes.

21 Q. Do you know one way or another whether she reviewed
22 records as well?

23 A. Yes. I know she reviewed records.

24 Q. So in total, how many other clinicians have diagnosed
25 Mr. Mahoney with Bipolar I or bipolar NOS?

1 A. Approximately ten.

2 Q. And that would include Dr. Mart, Dr. Kriegman,
3 Dr. Kambampati, Dr. Tillbrook, Dr. Kissin, the Mass. Department
4 of Corrections, Dr. Gorham, and yourself?

5 A. And Dr. Beaulieu.

6 Q. And who's Dr. Beaulieu?

7 A. She was his treating psychologist.

8 Q. Where?

9 A. At Devens back in 2013.

10 Q. How long have you worked with Mr. Mahoney, interacted with
11 him, assessed him?

12 A. About four years.

13 Q. Have you seen other physicians, psychiatrists, interns,
14 and psychologists work with him?

15 A. Yes.

16 Q. And what have you observed, if anything, about how their
17 views of Mr. Mahoney change over time or develop over time?

18 A. Well, many of them initially have perceived him as an
19 individual who has primarily a good deal of narcissism and
20 arrogance and antisocial personality, but the more time they
21 have spent with him, it's become clear that he exhibits a
22 number of symptoms of mania, clear symptoms of mania as well
23 as --

24 MR. SHEA: Your Honor --

25 THE COURT: Sustained.

1 MR. SHEA: Thank you.

2 Q. Do you know in the records that you've reviewed from 2008
3 to the present, has Mr. Mahoney ever been prescribed any mood
4 stabilizer medication?

5 A. Yes.

6 Q. Which ones?

7 A. Seroquel, Depakote, trileptal, and lithium.

8 Q. Has he been prescribed those mood stabilizers by multiple
9 physicians, psychiatrists and psychologists -- psychiatrists
10 and physicians? Excuse me.

11 A. They were all prescribed by psychiatrists, and, yes,
12 different psychiatrists.

13 Q. What's the significance, if any, of Mr. Mahoney being
14 prescribed Seroquel and mood stabilizers by psychiatrists who
15 have been treating him in the past?

16 A. Those are medications that are used to treat bipolar --
17 they're used to treat mania.

18 Q. And most recently, what dose of Seroquel has Mr. Mahoney
19 been on?

20 A. Currently he's on 800 milligrams of Seroquel.

21 Q. Has he ever been on a dose that's higher than that?

22 A. Yes. Up until he stopped his medication in October, he
23 was on 900 milligrams of Seroquel.

24 THE COURT: Is he taking anything now?

25 THE WITNESS: Yes. He's taking his Seroquel now.

1 Q. Have you read Dr. Hoffman's testimony in the fair hearing
2 transcript?

3 A. Yes.

4 Q. And you listened to him testify yesterday?

5 A. Yes.

6 Q. Do you agree or disagree with his opinion that Mr. Mahoney
7 does not meet the criteria for Bipolar I disorder?

8 A. I disagree.

9 Q. And can you explain the basis for your disagreement.

10 A. Well, a big part of the disagreement is that apart from
11 one diagnosis of Bipolar II disorder by Dr. Kissin in 2011 and
12 apparently some note that was written by Dr. Kazim that was
13 introduced yesterday, those are the only two clinicians that
14 I'm aware of that have ever concluded that he met criteria for
15 Bipolar II disorder. So one concern I have is that it's a
16 clear outlier. I mean, his opinion differs significantly
17 because not only did he indicate in his letter to Mr. Mahoney
18 that he didn't believe he met criteria for Bipolar I disorder,
19 he didn't even believe he met criteria for Bipolar II disorder,
20 which is different from every clinician that I have records
21 from with regard to his presentation since at least 2010.
22 There are some periods of time prior to that that some folks
23 had diagnosed him with other diagnoses, but for the past seven
24 years, I'm not aware of anyone who would have concluded that he
25 didn't meet Bipolar I, Bipolar II, or some type of

1 schizoaffective, schizophrenia-like disorder.

2 THE COURT: Let me ask you, he complains that he asked
3 for records and he only got a small subset of the records. Can
4 you explain what happened? Do you have personal knowledge
5 there?

6 THE WITNESS: What I can explain as far as what I know
7 about what happened is that he had spoken with Ms. Finch-Hall
8 prior to even reviewing the application and had indicated to
9 her that they had already decided not to take Mr. Mahoney.

10 THE COURT: That's a different answer. That's a
11 different issue. He's somewhat acknowledged that it was not
12 going to have a good result, but he wanted to make a good
13 clinical judgment, he said, so he asked for records. Were you
14 involved in what records were produced, which could explain
15 this discrepancy?

16 THE WITNESS: No. If he had asked for any specific
17 record, I would have been involved because I maintain his
18 records apart from the Bureau of Prisons' records.

19 THE COURT: I mean, he got almost nothing, right? Not
20 from you, from Devens?

21 THE WITNESS: Yes, he got almost nothing.

22 THE COURT: Why? Do you know?

23 THE WITNESS: I don't know why. That would be
24 speculation on my part as to why.

25 Q. Dr. Channell, did you ever see any written request

1 anywhere in any of the records you've seen from Dr. Hoffman
2 asking for a single piece of paper?

3 A. No.

4 Q. And Dr. Hoffman was provided your 2015 risk assessment
5 report which listed all of the documents that you had looked at
6 in arriving at your conclusion, correct?

7 A. Yes.

8 Q. Did you ever receive a call from him saying, "Dr. Channell,
9 can I have some of these records? I really want them to review
10 Mr. Mahoney's history"?

11 A. No.

12 Q. Never?

13 A. No. I was unaware of really anything related to
14 Dr. Hoffman until Mr. Mahoney provided his treatment provider
15 with the conclusions from his hearing.

16 Q. A moment ago I was asking you for the basis of your
17 disagreements with Dr. Hoffman's opinion that Mr. Mahoney
18 didn't have Bipolar I disorder and was questionable about
19 Bipolar II disorder. Can you just continue on what the basis
20 of your disagreement is.

21 A. Yes. So the first disagreement would be that it was a
22 clear outlier compared to most of the other records which
23 existed. Another disagreement was that he made his conclusions
24 based on -- whether it was his own fault or not, I don't have
25 an opinion on that, but he based his conclusion on a very small

1 number of records, despite the fact he knew there were more
2 records. And I guess my primary complaint is that despite
3 knowing there were more records, he didn't make any indication
4 in his conclusion or in his communication to Mr. Mahoney that
5 there were records available which he hadn't reviewed, and that
6 it's possible his opinion could change if there were other
7 records. He made a very conclusive statement to Mr. Mahoney
8 that he did not believe he had a major mental illness, and, to
9 be quite honest, it has interfered significantly with our
10 ability to care and treat Mr. Mahoney.

11 Q. Can you explain that?

12 A. Yes. After he received the communication from
13 Dr. Hoffman, he began cheeking his medication. Basically what
14 that means is, when you go to pill line and are provided your
15 medication, they ask you to open your mouth to show that you've
16 taken it; and he was putting the medication between his cheek
17 and his teeth so that it appeared that he had swallowed it, and
18 then he was spitting it out and accumulating it in a pill
19 bottle in his room, which was later found by staff after he
20 received an incident report for threatening his treating
21 psychologist.

22 Q. Just pause on that one episode for just a minute. I would
23 like you to turn to Exhibit 126 in the binder in front of you.
24 What is Exhibit 126?

25 A. It's a chronological disciplinary record, inmate

1 discipline data from the Bureau of Prisons.

2 Q. Okay. And if you turn to Bates No. 3050 within that
3 exhibit, what is that?

4 A. That is an incident report from the Bureau of Prisons.

5 MR. CALLAHAN: We offer 126 into evidence.

6 THE COURT: All right.

7 (Exhibit 126 received in evidence.)

8 Q. And does this describe the incident that you were just
9 discussing a moment ago?

10 A. Yes.

11 Q. Okay. And describe what happened. What was found in
12 Mr. Mahoney's possession on or about November 21, 2016?

13 A. They found 29 Seroquel, 300-milligram Seroquels in his
14 possession, which he was prescribed 900 milligrams of Seroquel
15 at the time.

16 Q. And I want to go back just in time just a moment to just
17 get the timing down, but you had recommended Mr. Mahoney, while
18 finding that he still met the criteria for 4246, you had
19 actually recommended in October of 2016 that he could be
20 conditionally released if he was willing to comply with certain
21 conditions; is that correct?

22 A. Yes. We had a risk panel meeting at which we interviewed
23 Mr. Mahoney at the end of August, 2016, and he had been doing
24 well up until that point. He had been taking his medication.
25 He had participated in a number of different treatment

1 activities and educational groups and other therapeutic
2 activities. He'd stayed out of trouble and hadn't received an
3 incident report for about ten months or so, and at that point
4 in time, we believed that with appropriate conditions in place,
5 he would be appropriate for a conditional release.

6 Q. So you just described the interview that you had with
7 Mr. Mahoney preceding that RAP report, and that was August 30,
8 2016?

9 A. Yes.

10 Q. That's before the date of the fair hearing with the
11 Department of Mental Health, which is in September of 2016,
12 correct?

13 A. Yes.

14 Q. So before the fair hearing, you had actually got the
15 impression he was doing better?

16 A. Yes.

17 Q. After the fair hearing -- well, actually, in the fair
18 hearing, do you know if Mr. Mahoney was told by Dr. Hoffman
19 Dr. Hoffman's view on whether he had bipolar or bipolar NOS?

20 A. Yes, he was.

21 Q. Okay. And what did you observe after that September 28,
22 2016 fair hearing, what did you observe of Mr. Mahoney's
23 behavior?

24 A. Well, the only interaction I had with Mr. Mahoney after
25 that was the August 30 interview, and then I interviewed him

1 again on November 23, 2016, so that's my only direct
2 observation of Mr. Mahoney.

3 Q. And the August interview that you had with him was before
4 the fair hearing, obviously?

5 A. Yes.

6 Q. Okay. And then you talked about this incident report with
7 respect to the medication that was found in Mr. Mahoney's
8 possession, the Seroquel. Did that occur after the fair
9 hearing?

10 A. Yes. I interviewed Mr. Mahoney on November 23, and he
11 explained to me that after he was told by Dr. Hoffman that he
12 did not have a major mental illness, he understandably did not
13 believe that he needed to take 900 milligrams of Seroquel any
14 longer, so he started cheeking about two-thirds of his dosage,
15 approximately 600 milligrams a day, and was hoarding it. He
16 didn't tell me what the purpose of holding onto it was apart
17 from the fact that he would take one if he wanted to take a nap
18 in the afternoon.

19 Q. And did you describe this interaction, this interview with
20 Mr. Mahoney, in your risk assessment report, the addendum to
21 your risk assessment report in November of 2016?

22 A. Yes.

23 Q. Now, when he started --

24 THE COURT: So I didn't get it. At this fair hearing,
25 did the outcome -- did Dr. Hoffman testify in front of

1 Mr. Mahoney that he had no mental illness? Is that what he's
2 relying on?

3 THE WITNESS: Yes, and he provided a written
4 communication to Mr. Mahoney. I believe Mr. Mahoney indicated
5 to me that that was in -- at some point in October. I can't
6 recall exactly. But, yes, in the hearing he did communicate,
7 and Mr. Mahoney was present at the hearing.

8 THE COURT: And it was at that point he started
9 cheeking?

10 THE WITNESS: Not long after, yes.

11 Q. Let me ask you this: Did you ever hear anything from
12 Dr. Hoffman or did you ever hear from anyone on the treatment
13 team who had spoken to Dr. Hoffman indicating Dr. Hoffman told
14 them that he disagreed with the diagnosis and Mr. Mahoney
15 didn't have Bipolar I?

16 A. No. The first time I became aware of it was, there were
17 several incidents that Mr. Mahoney had with his treating
18 psychologist, Dr. Gorham. He had been attending a group with
19 Dr. Gorham for some time, and, as I said, he was doing well.
20 He began becoming very argumentative, intrusive, basically
21 insubordinate during those meetings, insisted on calling him by
22 his first name. So he was reprimanded for that, and then he
23 became extremely agitated and angry with Dr. Gorham and
24 basically threatened him during an interaction between himself
25 and the intern who was treating him at the time. And it was

1 around this time that Dr. Gorham informed me that he had been
2 provided the final opinion with regard to Mr. Mahoney's
3 application to DMH, but he had been provided that by
4 Mr. Mahoney himself. We had not seen that.

5 Q. You didn't get it from DMH?

6 A. No.

7 Q. That incident that you described with Dr. Gorham, did
8 Mr. Mahoney receive an incident report for that?

9 A. Yes, he did.

10 Q. Can I ask you to turn to Exhibit 124 in your binder. What
11 is Exhibit 124?

12 A. An incident report dated November 21, 2016.

13 MR. CALLAHAN: The government offers 124, your Honor.

14 (Exhibit 124 received in evidence.)

15 Q. And what does this incident report describe, if you look
16 at Bates No. 1911?

17 A. This is an incident report for threatening another with
18 bodily harm, and it describes the interaction between
19 Mr. Mahoney and his treating psychiatrist -- his treating
20 psychologist, Dr. Gorham, on that date.

21 Q. And what did Mr. Mahoney do? And I'll refer you to, if
22 you can read for us the quote beginning on the third line down
23 in 11, and if it's easier to look on the screen, you can.

24 A. It says, "'You know what? Used my first name (in spite of
25 being directed not to previously).'" That's in parentheses.

1 "'I'm from right here in Boston and I'm getting out. Remember
2 that. I'm from right here in Boston, and I'm going to be out
3 there soon. Remember that.'

4 "He made this statement after being asked to apologize to
5 the group for violating the group rule of communicating in a
6 respectful manner. In context, the combination of the
7 statement and the act of coming rapidly toward me in what
8 appeared to be an aggressive attempt to intimidate me made it
9 clear that the inmate was expressing a threat."

10 Q. Now, after the fair hearing decision, after this incident
11 report, did there come a point when Mr. Mahoney refused to work
12 with his treatment team?

13 A. Yes. He had sent letters to both myself and to Dr. Gorham
14 indicating that he will no longer work with either of us, that
15 he'll never attend another Risk Assessment Panel meeting, and
16 that he will no longer cooperate with Dr. Gorham as his
17 treating psychologist, and he has not.

18 Q. And can I ask you to look at Government Exhibit 143.

19 THE COURT: And that continues to this day?

20 THE WITNESS: Yes.

21 Q. Can you look at Government Exhibit 143, please. What is
22 that?

23 A. This is an Inmate's Request to Staff form. It's a
24 procedure that the inmates at FMC Devens can use to communicate
25 with staff.

1 MR. CALLAHAN: The government offers 143, your Honor.
2 Is that admitted?

3 THE COURT: Yes, yes.

4 MR. CALLAHAN: Thank you.

5 (Exhibit 143 received in evidence.)

6 Q. Could you read for the Court what Mr. Mahoney writes in
7 the first two sentences there.

8 A. "As you know, Dr. Hoffman found that I was competent to
9 stand trial, and he did agree with Dr. Kissin, a forensic
10 psychologist for the BOP. On the advice of my attorney, there
11 will be no more further contact with you or Dr. Channell. My
12 most recent evaluation done by Dr. Hoffman clearly ruled out
13 Bipolar I disorder and Bipolar II disorder as well as
14 schizophrenia and acute manic. The 800 milligrams of
15 quetiapine --" that's Seroquel -- "was to treat these three
16 mental disorders, but Dr. Hoffman, a psychiatric and medical
17 doctor for the Mass. DMH, completely ruled these disorders out.
18 Therefore, since I do not have any of these three disorders
19 ruled out by Dr. Hoffman, Dr. Channell will be testifying for
20 the government in my 4247 and 4247 hearing, and Dr. Hoffman,
21 myself, and the hearing officer will testify for me in my next
22 hearing."

23 Q. And since that time, has he been meeting with his
24 treatment team at all at Devens?

25 A. No.

1 Q. You asked about records a moment ago. Have you ever had
2 the opportunity in your experience evaluating subjects where
3 you receive a certain number of documents to look at, and those
4 documents refer to other forensic reports or other mental
5 health records?

6 A. Every day, all the time, yes.

7 Q. What do you do when that happens?

8 A. I make an effort to obtain those records, if at all
9 possible, and if I'm unable to obtain those records, then I
10 would note in my record that I had made an effort but was
11 unable to acquire them.

12 Q. Would you identify in your report the specific documents
13 you had seen but were unable to get?

14 A. Yes. Usually I'll indicate records were requested from
15 whomever or whatever organization and were not able to be
16 acquired.

17 Q. Why do you do that?

18 THE COURT: The thing I'm not understanding is,
19 everyone is trying to make Mr. Mahoney better, okay, and you
20 have these two major institutions, the state institution and
21 the federal institution, which in this case seem to be acting
22 at odds with each other. Would you agree with that?

23 THE WITNESS: Yes, your Honor. The state has never
24 taken any --

25 THE COURT: So why didn't you reach out to him and

1 say, "But you didn't have all these records"? This,
2 unfortunately for Mr. Mahoney, may have ended up in the worst
3 possible situation where he had a doctor who in good faith was
4 only looking at a tiny number of records and came up with maybe
5 the wrong conclusion. In other words, what happened here?

6 THE WITNESS: With all due respect, I don't believe
7 Dr. Hoffman was acting in good faith. I don't believe --

8 THE COURT: Did you reach out to him and say, "What
9 about these documents?"

10 THE WITNESS: I was not aware of his involvement in
11 any way.

12 THE COURT: You weren't aware. So the social worker
13 never told you?

14 THE WITNESS: No. I was not aware of anything
15 happening with Dr. Hoffman until I received his letter to
16 Mr. Mahoney.

17 THE COURT: Should the social worker have called you?

18 THE WITNESS: Not in my opinion. In my opinion, he
19 had already indicated to us that he was not going to take
20 Mr. Mahoney, and I think it would be unlikely that we would
21 provide 3,000 pages of documents to someone who had already
22 told us they had no intention of taking this individual.

23 THE COURT: So has this ever happened before, this
24 sort of basically conflict between the state and the federal?

25 THE WITNESS: Well, the state has never cooperated

1 with us in placing any of our inmates in their --

2 THE COURT: I agree with that. I've seen that myself.
3 But what about here, though, Mr. Mahoney was looking for
4 medical help through the DMH; like, for example, maybe
5 residential housing? Have you had that situation happen
6 before?

7 THE WITNESS: I've never encountered a situation like
8 this in my experience at FMC Devens, no.

9 THE COURT: With any state?

10 THE WITNESS: With any state.

11 Q. So in the past, Dr. Channell, when you ask the state to
12 take over care and custody of someone like Mr. Mahoney who's
13 being committed, do you send a request?

14 A. Yes. We send a request that would include the most recent
15 risk assessment report and a certain amount of records going
16 back a certain period of time. I can't testify specifically to
17 that time frame. I'm not sure exactly what it is. I don't
18 send that. That's the social worker who does that.

19 Q. And if you look at Exhibit 134 -- and I'll put it up on
20 the screen for you -- Exhibit 134, Tab 15, this is that request
21 that you are familiar with that's typically sent to the state;
22 is that correct?

23 A. Yes, that's correct.

24 Q. And it attaches a number of things, including, if we look
25 back to Tab 16, Bates No. 2241, it includes your risk

1 assessment report from 2015, correct?

2 A. Yes.

3 Q. And does that identify all the documents you relied on?

4 A. I can't see that. It's --

5 Q. Sorry. Oh, did I do that? I could be in real trouble
6 now.

7 (Witness examining document.)

8 A. Yes, that was the most recent report at that time. There
9 are more recent ones now, but at that time it was the most
10 recent one.

11 Q. And just getting back to your disagreement with
12 Dr. Hoffman, which I think is where we veered off originally,
13 was there any other basis for your disagreement with
14 Dr. Hoffman regarding his assessment of Mr. Mahoney as not
15 having Bipolar I? Other than the records and the manic
16 episode, anything else?

17 A. Yes. As was testified to yesterday, at the time
18 Dr. Hoffman met with Mr. Mahoney, Mr. Mahoney was taking
19 900 milligrams a day of Seroquel, which is a very large dose of
20 Seroquel; and that was being prescribed to him to treat his
21 mania, and it was treating his mania. In the mental health
22 field, it's readily accepted that these are conditions that
23 don't just go away. You know, once you have Bipolar I
24 disorder, you always have Bipolar I disorder. Now, it can go
25 into remission when it's well treated, but simply because

1 you're not presenting as manic at the time of an interview does
2 not mean that you don't have the disorder, especially if you're
3 being treated effectively at that time. And nowhere in any of
4 the documentation from DMH and from Dr. Hoffman did he indicate
5 that Mr. Mahoney was on Seroquel, nor did he indicate the dose.
6 He made what I believe is a pretty big issue out of the fact
7 that he was sleeping as much as he did as a justification for
8 not having mania; yet he was fully aware that he was taking
9 900 milligrams of Seroquel a day, which, in my opinion, is
10 fairly egregious.

11 Q. And with respect to sleep, did you see any evidence of a
12 decreased need for sleep with respect to Mr. Mahoney in the
13 mental health records you reviewed before arriving at your
14 conclusion?

15 A. Yes. There have been multiple notations over the years of
16 periods of time where he's only needed three or four hours of
17 sleep at night, and it wasn't -- it was that he couldn't sleep,
18 but it was also the fact he felt like that's all he needed,
19 which is classic bipolar disorder. It's not only that you
20 can't sleep but you don't really feel like you need any more
21 sleep; three hours is enough for you.

22 Q. Now, aside from that, was there any information, out of
23 the limited materials that Dr. Hoffman did have, that he
24 ignored, in your view, in arriving at the conclusion that
25 Mr. Mahoney did not have Bipolar I?

1 A. All I can recall is the fact that he was on the
2 medication, which he did have those records that indicated the
3 medication.

4 Q. Just briefly, what other mental illnesses does Mr. Mahoney
5 suffer from, in your opinion?

6 THE COURT: How are you doing in terms of finishing?

7 MR. CALLAHAN: Probably 15 minutes, your Honor. Your
8 Honor, there have been interruptions. I would like to get
9 through this, and I think it will be 15 minutes and I'll be
10 done.

11 A. Well, I mean, as Dr. Hoffman had testified, he's had a lot
12 of different diagnoses over the years. Very few of them would
13 be considered major mental illnesses apart from Bipolar I and
14 schizoaffective disorder or bipolar not otherwise specified;
15 but, in addition to that, it's fairly clear that he suffers
16 from antisocial personality disorder.

17 Q. Still to this day?

18 A. Yes.

19 Q. You also offered an opinion on whether or not Mr. Mahoney
20 is dangerous as a result of his mental disease or defect. What
21 do you base that on?

22 A. It's based on his history, both his history of criminal
23 offenses, his history of noncriminal incidents within confined
24 settings, controlled settings. It's based on the fact that he
25 has a major mental disease or a defect, which is the direct

1 cause of many of the incidents of violent behavior that he's
2 caused in the past. It's based on the fact that he lacks
3 insight into his mental illness, and his history of violence,
4 and it's based on multiple incidents indicating that he's not
5 willing to comply with conditions which would be put in place
6 to mitigate the risk that he presents.

7 Q. Now, I don't want to run through what we've already
8 covered, but in the hearings in 2014, did you identify any
9 incident reports that Mr. Mahoney had been issued during his
10 time at Devens?

11 A. Yes. I believe at that time he'd had eight violent
12 incident reports.

13 Q. And just in general, what did those relate to at a very
14 high level?

15 A. Assaulting other inmates, assaulting staff, threatening.

16 Q. Since that time, since that commitment in the summer of
17 2014, has he received any additional incident reports for
18 violent or threatening or assaultive behavior?

19 A. Yes. He's received six further incident reports.

20 Q. Okay, I'm just going to ask you to look at a few of those.
21 Can you turn to Exhibit 118. What's Exhibit 118?

22 A. This is a discipline hearing officer report. It's dated
23 October 28, 2014. It was for threatening another with bodily
24 harm.

25 MR. CALLAHAN: The government offers 118 into

1 evidence, your Honor.

2 THE COURT: Yes.

3 (Exhibit 118 received in evidence.)

4 Q. Can you turn, please, to Exhibit --

5 MR. SHEA: Object. I'd object, the point being it's
6 2014.

7 THE COURT: I'll allow all these in. Were there any
8 current ones since he stopped taking his meds?

9 THE WITNESS: Yes. He received an incident report for
10 threatening Dr. Gorham.

11 THE COURT: The one that we saw?

12 THE WITNESS: Yes.

13 Q. And did he receive an incident report -- looking at
14 Exhibit 122 in front of you, what's that?

15 A. This is an incident report dated November 4, 2015. It's a
16 disciplinary hearing officer report actually for threatening
17 another with bodily harm, insolence, and destroying government
18 property.

19 MR. CALLAHAN: The government offers 122 into
20 evidence.

21 THE COURT: Allowed.

22 (Exhibit 122 received in evidence.)

23 Q. And just referring briefly to Bates No. 3063 of
24 Exhibit 122, can you read what it was that Mr. Mahoney said
25 that resulted in this incident report.

1 A. Yes. This was during a treatment team meeting. "'You
2 know what I want to do? Put that fucking Dr. Channell in an
3 oven, turn the gas up till he fucking lies. I hate liars.'"

4 Q. And what did he do after that?

5 A. "When redirected multiple times to lower his voice and
6 speak appropriately about and to staff, Inmate Mahoney
7 disregarded the redirection, finally stating 'Go fuck
8 yourself.' At that point he stood up, picked up his stack of
9 papers, kicked the metal trash can, crushing it in half, and
10 walked away cursing at staff members."

11 Q. Were there other incident reports beyond these between the
12 time he was committed and today?

13 A. Yes. He received an incident report, another incident
14 report for threatening me at another point in time.

15 Q. Is that Exhibit 120?

16 MR. CALLAHAN: I'll just identify it, your Honor, and
17 move on.

18 A. Yes, it is.

19 MR. CALLAHAN: I offer 120, your Honor.

20 THE COURT: Yes.

21 (Exhibit 120 received in evidence.)

22 Q. What's the significance of these incident reports in a
23 controlled environment like Devens Medical Center?

24 A. Well, it's further evidence of both mania and violence
25 risk, that even in a controlled treatment setting -- and this

1 is one of the more controlled environments that Mr. Mahoney
2 could be in -- he continues to exhibit threatening behavior,
3 destructive behavior. It speaks to his ability to function in
4 the community if he has this much difficulty in a confined
5 inpatient setting with regard to his ability to behave himself
6 appropriately and not become violent and threatening in a less
7 restrictive setting.

8 Q. Have you seen any insight or do you have an opinion on
9 whether he has any insight into how his mental illness results
10 in some of these threatening or violent incidents that resulted
11 in incident reports and convictions earlier on in his life?

12 A. No. I don't believe he has any insight. He tends to
13 minimize the intent and the impact of his behavior.

14 Q. Do you describe that in your risk assessment reports?

15 A. Yes.

16 Q. And what's the significance, if any, of his lack of
17 insight into his mental illness and the effect his mental
18 illness has on his behavior?

19 A. Well, lack of insight into mental illness results in lack
20 of compliance with treatment, and he has a significant history
21 of lack of compliance with treatment. He stopped taking his
22 medications on many occasions during times he was treated by a
23 multiple number of different treatment providers, and his lack
24 of insight into the impact of his behavior decreases the
25 likelihood that he'll be able to alter his behavior when

1 similar circumstances arise in the future.

2 Q. If you had to rate now his lack of insight into his mental
3 illness and its effect on his behavior relative to the entire
4 time that you have been evaluating him, how would it compare?

5 A. At this point he has absolutely no insight whatsoever, and
6 that's based on the fact Dr. Hoffman expressed to him his
7 belief he does not have major mental illness.

8 Q. So at this point, do you have an opinion of whether he
9 presently suffers from a mental illness such that his release
10 would result in the substantial risk of bodily harm to another
11 or serious property damage?

12 A. Yes, I do. I remain of the opinion that his release would
13 pose a substantial risk of bodily injury to another person as a
14 result of a major mental illness.

15 Q. And just very briefly on conditions, if you didn't have
16 this opinion and if you did think that there were conditions
17 that would mitigate that risk that you just described, do you
18 have any concern about whether Mr. Mahoney would comply with
19 those conditions?

20 A. Yes. Just a few weeks ago he sent myself and Dr. Gorham a
21 cop-out in which he indicated he will never comply with any
22 conditions or go to a group home and that he will only accept
23 an unconditional release.

24 THE COURT: Where is that?

25 MR. CALLAHAN: Let me just direct you to Exhibit 130,

1 your Honor.

2 Q. You described it as a cop-out?

3 A. Oh, yes. I'm sorry. That's what we call the inmate
4 request to staff form. I have no idea why. It predates my
5 employment. That's what we use.

6 THE COURT: What's this, tab what?

7 MR. CALLAHAN: Tab 131, your Honor. So once your
8 Honor has it, the government would offer 131 into evidence.

9 THE COURT: Yes.

10 (Exhibit 131 received in evidence.)

11 Q. Can you read what Mr. Mahoney -- well, what's the date of
12 this communication from Mr. Mahoney?

13 A. January 12, 2017.

14 Q. Just two weeks ago, and what does Mr. Mahoney write to you
15 in this communication?

16 A. "I'm writing to inform you that I will never take any
17 conditional release, group home, or halfway house. I will only
18 take an unconditional release only."

19 Q. Now, is this consistent or inconsistent with his attitude
20 in the past about whether or not he would comply with
21 conditions of release?

22 A. It's both consistent and inconsistent. He has
23 communicated to me that he would comply with conditions and
24 he's also communicated that he wouldn't.

25 Q. Were there ever any times where he communicated to you in

1 a Risk Assessment Panel interview where he's talking to the
2 Risk Assessment Panel in order for them to come to some
3 conclusion about whether he could be released, was there ever a
4 situation where he told you, "Yes, Dr. Channell, I'll comply
5 with that condition of release," and then told other people
6 that he wouldn't following the interview?

7 A. Yes, both last year and this year. Last year he
8 communicated to us that he would comply with conditions of
9 release, and then communicated to his social worker and
10 individuals who he was talking to on the telephone in the
11 community that he would not comply.

12 Q. What specific conditions of release?

13 A. One of them was registering as a sex offender. And then
14 this year he indicated to us when we met with him in August
15 that he would comply with conditions of release, including
16 going to a residential setting or group home, and then he sent
17 me this.

18 THE COURT: Let me ask you, is that even feasible?
19 Let's say he went back on the Seroquel and he went back on the
20 900 milligrams and he came back into compliance as he was when
21 you did the original risk assessment, are there group homes
22 available so that we have some assurance he'd take the
23 medications?

24 THE WITNESS: Yes. In fact, I had spoken with
25 Ms. Finch-Hall between the period that we risk paneled him and

1 submitted the report, and she had a number of very good leads
2 to have Mr. Mahoney be released.

3 THE COURT: And those kinds of places would make sure
4 he took his medication?

5 THE WITNESS: Yes.

6 THE COURT: Even if we don't go through the state?

7 THE WITNESS: Yes.

8 THE COURT: Because it sounds as if that was --

9 THE WITNESS: Yes. These were not through the state.

10 THE COURT: The state either sounded like it was a
11 dead end, they wouldn't supply it because they didn't think he
12 had a major mental illness, or, in any event, the wait lists
13 were so long. So this is apart from that? The feds provide
14 it?

15 THE WITNESS: Yes. It looked very promising at that
16 point in time.

17 Q. And just to be clear --

18 THE COURT: And how long would you say he'd have to be
19 compliant with meds and be calm again before you would feel
20 comfortable with that as a solution?

21 THE WITNESS: Given his history, it would have to be
22 at least six months.

23 Q. And so just to be clear, now you would not even recommend
24 his conditional release to a group home; is that correct?

25 A. No, I don't have any reason to believe that he would

1 comply with conditions at this point in time.

2 MR. CALLAHAN: Your Honor, if I could have one minute
3 just to look over my notes and make sure there's nothing else.

4 (Pause.)

5 MR. CALLAHAN: I have no further questions at this
6 time.

7 THE COURT: Mr. Shea, we'll go to around 11:00 or
8 11:15, why don't we say, and then take a break, or do you want
9 to do it right now?

10 MR. SHEA: Whatever you'd like, Judge.

11 THE COURT: We'll get going. We'll get started.

12 MR. SHEA: Just three documents that my client
13 provided to me today that I'd like to use in my
14 cross-examination.

15 THE COURT: All right.

16 MR. SHEA: They're very short.

17 MR. CALLAHAN: Your Honor, to move this along, could I
18 just take two pictures of this on my phone? That way, I don't
19 have to bother him and look over his shoulder.

20 THE COURT: Well, that's a new approach. All right.

21 MR. CALLAHAN: I know they're not allowed in court,
22 so --

23 (Pause.)

24 MR. CALLAHAN: Thanks, Mark.

25 MR. SHEA: For the monitor, I'm going to be over

1 there, but I'll start here just for these documents, I guess.

2 CROSS-EXAMINATION BY MR. SHEA:

3 Q. So, Doctor, you were shown what's marked as Government
4 Exhibit 143, and the date on it is December 15 of last year,
5 correct?

6 A. Yes.

7 Q. Now, at this point you're saying Mr. Mahoney is off his
8 meds, right?

9 A. I believe so, yes.

10 Q. Well, that's what you testified to under oath here, you
11 just said.

12 A. Well, I don't know exactly when he stopped them. We only
13 became aware of it when he received the incident report.

14 Q. Wait. I'd swear you just testified he's been
15 medication-noncompliant. The Judge just said "if he ever gets
16 back on his Seroquel," based on your sworn testimony that he's
17 not taking his meds. Are you saying now that you don't know?

18 MR. CALLAHAN: Objection. That mischaracterizes
19 Dr. Channell's testimony. He said he was on 800 milligrams
20 presently. That's a mischaracterization of his testimony.

21 THE COURT: Well, wait. Then I'm confused. Why don't
22 you clarify. What is your testimony?

23 THE WITNESS: Mr. Mahoney resumed taking his
24 medication after he received the incident reports, which is
25 what I testified to earlier. His compliance was spotty until

1 the end of December, 2016. He has been compliant since that
2 point in time.

3 Q. All right, so you're saying he's compliant since the end
4 of December, 2016, so let's read through this when you're
5 saying he's not yet medication-compliant.

6 "As you know, Dr. Hoffman found that I was competent
7 to stand trial, and he did agree with Dr. Kissin, a forensic
8 psychologist for the BOP."

9 And so let's just break that down. You've testified
10 quite a bit about being upset with Dr. Hoffman's analysis and
11 how it threw off Mr. Mahoney's treatment, so what Mr. Mahoney
12 writes there is in fact true, right?

13 A. Yes, it's true.

14 Q. Okay, it's an accurate assessment, correct?

15 A. Yes.

16 Q. And then he references, meaning Mr. Mahoney references
17 Dr. Kissin. That's a reference to the fact that Dr. Kissin had
18 found him to have the Bipolar II that's referenced by
19 Dr. Hoffman, right?

20 A. Correct.

21 Q. That's rational, isn't it?

22 A. Yes.

23 Q. And he's off his meds?

24 MR. CALLAHAN: Objection. Mischaracterizes the
25 doctor's testimony.

1 Q. Well, Doctor, didn't you --

2 THE COURT: You know what, you're doing what --

3 MR. CALLAHAN: But he keeps mischaracterizing what he
4 said. What he said was --

5 THE COURT: He's a smart guy. If he disagrees with
6 it, say, "No, I didn't say that."

7 Q. Okay, you correct me if I got it wrong. I thought you
8 said that you could clarify that he was medication-compliant at
9 the end of December. Isn't that what you just testified to?

10 A. Medication compliance means that you are taking the full
11 dose every day as intended. Yes, I can testify to that.

12 Q. As of the end of December, right?

13 A. Yes.

14 Q. Okay. This is penned on December 15, right?

15 A. Yes.

16 Q. It's fair to call the 15th the middle of December, isn't
17 I?

18 A. Obviously.

19 Q. Right. So that would be some time before the end of
20 December when he's medication-compliant, isn't it?

21 A. Obviously.

22 Q. Thank you. Now, "On the advice of my attorney, there will
23 be no more contact with you or Dr. Channell." That's a
24 reasonable sentence to write, isn't it? I mean, you may
25 disagree with his sentiment, but it's not an irrational

1 statement, is it?

2 A. It would depend on whether or not that's what you advised
3 him.

4 Q. If it's his view of that, that's not an irrational
5 statement, is it?

6 A. If it's untrue, yes, it is irrational.

7 Q. Well, meaning he's basically writing saying, "We've got a
8 court hearing coming up, and Dr. Channell is on one side and
9 Dr. Hoffman is on the other, and you people," meaning you
10 doctors, "don't represent my interest, and so I won't be
11 meeting with you anymore because you're saying I need to be
12 locked up." Isn't that a reasonable thing for the man to do?

13 A. No.

14 Q. Well, it was responded to by Dr. Gorham, right?

15 "Mr. Mahoney: As this is not the place for a diagnostic
16 discussion, sufficient to say that years of data are much more
17 reliable than Dr. Hoffman's hour-long interview with you while
18 you were medication-compliant. I recognize your choice to end
19 psychological treatment at this time, and I will decrease our
20 contact to monthly, which is the lowest frequency possible per
21 our policy. I wish you the best. Dr. Gorham, 12/20/16."

22 Correct?

23 A. Yes.

24 Q. So that's the response from the institution. Dr. Gorham
25 works for the institution, right?

1 A. Yes.

2 Q. He's basically saying, "I'll respect your point of view.
3 I wish you would continue with the treatment more frequently,
4 but I'll do as you asked," right?

5 A. Yes.

6 Q. So it seems like a rational correspondence back and forth,
7 doesn't it?

8 A. No.

9 MR. SHEA: I'll move it into evidence, and the Court
10 can make a finding.

11 THE COURT: Okay.

12 MR. SHEA: It can be defense Exhibit No. 1?

13 MR. CALLAHAN: Sure.

14 (Defense Exhibit 1 received in evidence.)

15 Q. Now, there's been other correspondences from Mr. Mahoney
16 regarding quetiapine, Bipolar I, disagreeing with your
17 assessments and the institutional assessment at Devens; fair to
18 say?

19 A. Yes.

20 Q. And on 1/11 --

21 A. I'm sorry, I can't --

22 Q. It's hard to see, yes. Okay, sorry. Let's see. You know
23 what, I'll just bring it up to you rather --

24 A. All right.

25 Q. Why don't you read what -- it's fair to say a Dr. Kennedy

1 works as the chief psychiatrist at Devens?

2 A. Yes.

3 Q. What did he respond to Mr. Mahoney on 1/11/17?

4 A. "It appears that you are doing reasonably well on your
5 current treatment, including being back on the N-4 unit. The
6 combination of Seroquel and Klonopin appears to be working
7 well."

8 Q. And what's the N-4 unit?

9 A. It's one of the opening housing units.

10 Q. So the chief psychiatrist on --

11 MR. SHEA: I'd like this defense Exhibit 2.

12 (Defendant Exhibit 2 received in evidence.)

13 Q. On January 11, 2017, the chief psychiatrist at Devens is
14 saying, "You're doing reasonably well, you're back on an open
15 unit, and you're medication-compliant," isn't that right?

16 A. Yes.

17 Q. And you're saying that Mr. Mahoney -- I thought you were
18 saying -- I thought you testified he wouldn't work with his
19 treatment team, that he's dangerous, and you wouldn't believe
20 he could be released safely in any way right now, correct?

21 A. Yes.

22 Q. So Mr. Mahoney actually requested the medication, right?

23 A. I don't know the answer one way or the other.

24 Q. Well, he's not court ordered to have it, is he?

25 A. No, he's not.

1 Q. So you can't force it, can you?

2 A. No.

3 Q. So if he's taking it, it's at his own behest?

4 A. Yes.

5 Q. And he's taking it, isn't he, as far as you can tell
6 institutionally?

7 A. Yes.

8 Q. Now, I was sent some lab results which I can't read
9 myself, but it came from -- and they're Bates --

10 MR. CALLAHAN: Your Honor, can I go up and look, just
11 because I haven't seen what counsel is referring to?

12 MR. SHEA: Sure. We sent them to you.

13 MR. CALLAHAN: I didn't know you were going to use
14 them, so I don't have copies of everything you sent, but I'm
15 happy to look over your shoulder, Counsel.

16 Q. So here, I'll ask you, Doctor. Why don't you look at
17 these labs that range from Bates 1948 at the high end down to
18 1937 at the low end, and I believe this is from the time period
19 when Mr. Mahoney is supposedly cheating his medication. Can
20 you determine from those lab reports and blood tests whether
21 Mr. Mahoney was in fact not taking his medications?

22 A. No.

23 Q. Can you look at them?

24 A. No, there is no blood test for Seroquel. So, I mean, I
25 will look at them, but there's -- there's not a test, so I know

1 it's not in these labs.

2 Q. So there's no way that -- you said he was taking at some
3 point upwards of 900 milligrams of Seroquel. That doesn't show
4 up in the body at all?

5 A. It isn't that it doesn't show up in the body. There's no
6 way to measure whether he's taking the therapeutically
7 effective dose of the medication, which is why we do lab
8 testing for things like lithium and Depakote. So you could at
9 great expense perform a test which would show whether there was
10 any amount in the body at all, but it wouldn't serve any
11 therapeutic purpose.

12 Q. Okay, but it's clear that Mr. Mahoney actually requested
13 these tests to try and show that he was in compliance, right?

14 A. No. Those are routine lab tests that the doctor requests,
15 not Mr. Mahoney.

16 Q. But even if -- but one can request them, right, meaning to
17 try and show that, hey -- like, can you show when he first put
18 a pill in the Aleve bottle that was found in his cell?

19 A. No.

20 Q. Okay. And in fact some of Mr. Mahoney's medication is
21 crushed, isn't it?

22 A. Now it is, but not at that point. It's crushed now
23 because he was cheeking it.

24 Q. At different points it's been crushed, right?

25 A. Not in the recent past it hasn't, not at any time in the

1 past year.

2 Q. But you can't show that he was not taking his medication;
3 isn't that fair to say?

4 A. No. We have a bottle full of his medication.

5 Q. Right, but do you know when he got that bottle?

6 A. No.

7 Q. Do you know when he was first prescribed Seroquel?

8 A. Yes.

9 Q. When was he first prescribed Seroquel?

10 A. I'd have to go through the record. I mean, there would be
11 a note on that date. He's been on it for quite some time.

12 Q. Years, right?

13 A. Yes.

14 Q. Okay. And how many pills a day for years?

15 A. Well, it would depend on the dose. At the time that we
16 discovered it, it had been -- he was on three a day, but,
17 again, Mr. Mahoney himself told me when he started cheating the
18 medication. This is not supposition on my part. I had an
19 interview with him.

20 THE COURT: What precisely did he say?

21 THE WITNESS: I'd have to -- can I refer to my note?

22 THE COURT: Yes.

23 THE WITNESS: "Mr. Mahoney reported he had been told
24 by Dr. Hoffman on October 24, 2016, that he does not have a
25 mental illness. As a result, he reportedly stopped taking his

1 full dose of Seroquel at night, cheeking one or two of the
2 pills and later placing them in the Aleve bottle."

3 So he acknowledged that he stopped taking the
4 medication subsequent to October 24.

5 Q. Cheeking one or two, right?

6 A. Yes.

7 Q. So if that were an accurate statement and they were found
8 at the end of November, it would be about one a day, right?

9 A. I don't recall exactly when they were found.

10 Q. And he was on 900 milligrams still?

11 A. Yes.

12 Q. So that would be he was taking 600 milligrams, right?

13 A. Possibly.

14 THE COURT: What he was doing was, he was taking one
15 or two pills a day?

16 THE WITNESS: Yes.

17 THE COURT: And he was decreasing the dosage?

18 THE WITNESS: Yes, without telling his psychiatrist.

19 THE COURT: Without permission --

20 THE WITNESS: Yes.

21 THE COURT: -- and without authorization.

22 Q. And the one way that you say that he acted out was in
23 staff -- in a meeting. Now, most of the acting out that you
24 have identified by Mr. Mahoney since the last hearing before
25 Judge Saris is that he has a negative institutional response to

1 a number of the counselors, correct?

2 A. I don't know what that means.

3 Q. Well, okay. What that means is, when he was disrespectful
4 to staff in November of 2016, that was someone on the treatment
5 team, one of the -- was it one of the psychologists?

6 A. Yes.

7 Q. Okay. And when he was disrespectful in 2014 and said the
8 unfortunate -- is accused of saying those unfortunate things
9 regarding you, you're on the staff, correct?

10 A. First of all, I wouldn't characterize either of those
11 incidents as disrespectful. They were threatening. But, yes,
12 I am on the staff.

13 Q. Okay. So what I mean, though, is, Mr. Mahoney, the thing
14 he focuses on is his legal situation; isn't that right?

15 A. Absolutely.

16 Q. And doesn't he focus on the fact that here he is, a
17 nonviolent, meaning it was failure to register was what he was
18 accused of in the Federal Court in 2010, right?

19 A. That's what he's accused of. Nonviolent I disagree with.

20 Q. Well, wait. No, no, it's a nonviolent -- failure to
21 register is a nonviolent offense, isn't it?

22 A. That is a nonviolent offense, yes.

23 Q. Okay. So here's a man who finds himself in court in 2010
24 accused of a nonviolent offense, and now we're in 2017 and he's
25 still locked up, okay? And he views you and the other

1 psychologists at Devens as the reason he's still locked up;
2 isn't that right?

3 A. I know he views me. I don't know what his opinion of the
4 other psychologists is. They've not had -- for example,
5 Dr. Gorham has never had any role in his civil commitment
6 proceedings or his Risk Assessment Panel decisions.

7 Q. But let's look at why he might feel that way. So when
8 he's first in the Federal Court in New Hampshire on that
9 failure-to-register charge, he's sent for an assessment as to
10 his competence to stand trial, isn't he?

11 A. Yes.

12 Q. And your institution, Devens, finds that he is competent
13 to stand trial, doesn't it?

14 A. Yes.

15 Q. And it finds that he has Bipolar II, which you just
16 testified today was a major mental illness, right?

17 A. Yes.

18 Q. So at that point, that's Devens' opinion, and the
19 person -- now, let's get to Dr. Mart. Dr. Mart is the person
20 you testified today you're relying on for the finding that
21 Mr. Mahoney is Bipolar I, right?

22 A. He's one of ten.

23 Q. He was the first person you cited in terms of, you read
24 his report and you saw "mania" in the interview? Isn't that
25 what you testified to?

1 A. I'll go along with that.

2 Q. But your institution disagreed with that gentleman, that
3 doctor, didn't it?

4 A. The institution does not offer opinions or diagnoses.

5 Q. The doctor from your institution opines to that court that
6 basically they disagreed with Dr. Mart; isn't that correct?

7 A. I believe that Dr. Mart's evaluation came after
8 Dr. Kissin's evaluation. That was why he was -- yeah, in fact
9 it did. He was sent back to Devens because Dr. Mart offered
10 the opinion that he was not competent to stand trial, and the
11 court agreed with his opinion and disregarded Dr. Kissin's
12 opinion, and sent him back for another evaluation.

13 Q. Yes, and Dr. Kissin's opinion -- now, what they were
14 evaluating was whether Mr. Mahoney was capable of representing
15 himself too, right?

16 A. Yes.

17 Q. Meaning he wanted to be his own lawyer?

18 A. Yes, still does, to my understanding.

19 Q. And Dr. Kissin, is she still associated with Devens?

20 A. Yes.

21 Q. Okay. Dr. Kissin said that, "Oh, yeah, Mr. Mahoney is
22 totally competent to represent himself in a criminal charge in
23 a Federal Court," right?

24 A. She didn't say that, no.

25 Q. Well, she said he was competent to represent himself?

1 A. Yes.

2 Q. Right?

3 A. I don't believe she offered the opinion on competency to
4 represent himself. She offered the opinion he was competent to
5 stand trial.

6 Q. It was clear that that was the issue. If you read Mart's
7 things that you're relying on now, he's talking about him
8 representing himself?

9 A. That is a part of the issue. It is not the issue.

10 Q. So one can imagine that Mr. Mahoney finds it a little
11 disorienting and maybe upsetting that these very psychologists,
12 who said he could competently represent himself in a Federal
13 Court to face a criminal charge, change their diagnosis from
14 Bipolar II to Bipolar I once they're petitioning to keep him
15 locked up. Isn't that what happened?

16 A. No, it's not.

17 Q. It may not be what you're saying you intentionally did,
18 but isn't that what happened in terms of Devens' position?

19 A. No, it's not.

20 Q. When you petitioned to Judge Saris, did you say he had
21 Bipolar I?

22 A. I said he had Bipolar I. I have never changed my opinion
23 with regard to him having Bipolar I.

24 Q. At what point did you tell the New Hampshire court
25 regarding competency that he had Bipolar I?

1 A. When I concluded my competency to stand trial and
2 restoration period of treatment, which was I think the end of
3 2013 -- in 2013.

4 Q. Right, and which was to say he wasn't restorable, so now
5 we can go to 4246 and commit him, right?

6 A. I did not say, "Now we can go to 4246 and commit him."
7 The court ordered an evaluation of that in New Hampshire. That
8 was not my decision.

9 Q. But you can't get the 4246 until you say he's nonrestorable;
10 isn't that right?

11 A. No, that's not right. There are other ways to get to
12 4246.

13 Q. Now, today you brought the DSM-V with you --

14 THE COURT: Is this a good time to take our break?

15 MR. SHEA: Sure.

16 THE COURT: Because you seem to be moving --

17 MR. SHEA: That's fine.

18 THE COURT: How long do you think you have?

19 MR. SHEA: I'm not sure. I'm going to move as quickly
20 as I can, but I have a lot of material.

21 THE COURT: Well, let me make it clear: I have
22 something I have to do at 1:00 and I have things this
23 afternoon, so if you don't finish, it means that we come back
24 at a different period of time.

25 MR. SHEA: I understand. I will do my best to finish

1 by 1:00.

2 THE COURT: We may not finish with oral argument or
3 that sort of thing, but if you can possibly finish with the
4 doctor by then. But, otherwise, you're not available next
5 week, right?

6 MR. SHEA: So I'm supposed to be preparing for my
7 murder trial next week, but I -- I mean, I --

8 THE COURT: Once I lose you, do I lose you for, say, a
9 month?

10 MR. SHEA: No. I could come back Wednesday or
11 Thursday if I needed to so that -- I don't want Mr. Mahoney to
12 have to linger unnecessarily.

13 THE COURT: I get that. I'm just giving you a sense
14 that I don't have much flexibility. I need to leave here no
15 later than 1:00.

16 MR. SHEA: No, I understand.

17 MR. CALLAHAN: And I don't know if we're going here,
18 but if we are talking about next week, I'm going to be not here
19 from Wednesday afternoon on of next week. I'm traveling out of
20 state, but I'll make myself available anytime before that.

21 THE COURT: Let's see if we can finish him, at least,
22 and then maybe I could do submissions post-trial. But, anyway,
23 do you know whether Mr. Mahoney will want to testify?

24 MR. SHEA: That's up in the air. I think it depends
25 on how I do today.

1 THE COURT: All right. Well, you don't have to decide
2 that, but the one thing that's certain here is that we're
3 ending this at about 1:00, okay? All right, thank you.

4 THE CLERK: All rise.

5 THE COURT: Yes, we'll just try and shorten this up.
6 We'll just do like a 15-minute break rather than -- sometimes I
7 do half an hour, but I think we're going to try and get you out
8 of here, Dr. Channell.

9 THE WITNESS: Thank you.

10 (A recess was taken, 11:15 a.m.)

11 (Resumed, 11:35 a.m.)

12 MR. SHEA: Go?

13 THE COURT: Yes, go for it.

14 BY MR. SHEA:

15 Q. I'm approaching with Exhibit 102, which has a date report
16 of May 30, 2013, correct?

17 A. Okay, yes.

18 Q. Is that what it says?

19 A. Yes.

20 Q. And the signature page, whose name and signature is that
21 on the back page?

22 A. My name is on the back page, and that's the signature of
23 Dr. Kissin.

24 Q. Okay, so it's Dr. Kissin's signature but your name, right?

25 A. Yes.

1 Q. Is it your report?

2 A. Yes.

3 Q. Okay, let's go to Page 12 of that report. Under "Clinical
4 formulations," please read aloud to the Court that entire
5 paragraph on bipolar disorder.

6 A. "Based on his history and presentation during the current
7 evaluation, the defendant meets --"

8 THE COURT: You know, you need to slow down, or she'll
9 never get it.

10 THE WITNESS: I'm sorry.

11 A. "Based on the history and presentation during the current
12 evaluation, the defendant meets diagnostic criteria for
13 Bipolar I disorder. According to the Statistical Manual of
14 Mental Disorders Fourth Edition Text Revision, the essential
15 feature of Bipolar I disorder is a clinical course
16 characterized by one or more manic episodes, which are defined
17 as distinct periods during which there is an abnormally and
18 persistently elevated, expansive, or irritable mood lasting for
19 at least one week. The mood disturbance must be accompanied by
20 at least three additional symptoms, including inflated
21 self-esteem or grandiosity, decreased need for sleep, pressure
22 of speech, flight of ideas, distractibility, increased
23 involvement in goal-directed behavior or psychomotor agitation,
24 and excessive involvement in pleasurable activities. Manic
25 episodes are sufficiently severe to cause marked impairment in

1 occupational functioning, or in usual social activities or
2 relationships with others, or to necessitate hospitalization to
3 prevent harm to self or others."

4 Q. So here you write about --

5 THE COURT: Now, which exhibit is this?

6 MR. SHEA: Exhibit 102.

7 THE COURT: 102.

8 Q. Now, today you've separated out saying for a duration and
9 hospitalized, but in the report that you wrote, you said, "One
10 or more manic episodes, which are defined as distinct periods
11 during which there is an abnormally or persistently elevated
12 expansive or irritable mood lasting for at least one week."

13 You wrote that, didn't you?

14 A. Yes.

15 Q. Okay. Now, the first thing you cited was Dr. Mart's
16 report today. How many hours did Dr. Mart meet with
17 Mr. Mahoney in doing his report, if you know?

18 A. I don't. I don't know. It may be specified in the
19 report. If it is, I don't remember.

20 Q. Well, he went into a locked institution as a psychologist
21 to meet with him, right?

22 A. Yes.

23 Q. So it's fair to say he didn't stay a week, right?

24 A. That's fair to say.

25 Q. Okay. He probably went in and out in a couple of hours,

1 right?

2 A. More likely than not, yes.

3 Q. Okay. So the most that he could have observed of a manic
4 episode would have been a couple hours, right?

5 A. No.

6 Q. Well, it wouldn't have been a week, right?

7 A. You don't have to directly observe, as I indicated during
8 the direct, every minute of a week to provide the diagnosis.

9 Q. Well, is there anything in his report that indicates he
10 was given records from the institution where Mr. Mahoney was
11 housed?

12 A. I don't recall. I don't know.

13 Q. But you were relying on him, right, for the diagnosis of
14 Bipolar I, right?

15 A. He's one of 3,000 pages' worth of criteria that I
16 diagnosed on, YES.

17 Q. Okay, so let's do that. What I want you to do -- and you
18 have access to every page of documents at Devens, right?

19 A. Yes.

20 Q. Regarding Mr. Mahoney?

21 A. Yes.

22 Q. If you want it, you can get it, right?

23 A. Yes.

24 Q. Okay, please provide for us or point us to the documents
25 that show one consistent week of mania.

1 A. I did earlier when we discussed Dr. Kambampati's notes.

2 Q. No, you pointed to Dr. Kambampati was one day of notes.
3 Right?

4 A. Well, I didn't bring the entire electronic medical record
5 with me today. I'm sorry.

6 THE COURT: Well, as you're sitting here, do you
7 remember an incident that lasted a week of mania?

8 THE WITNESS: Yes. As I indicated, that incident
9 lasted several weeks.

10 THE COURT: The Kambampati incident?

11 THE WITNESS: Yes.

12 MR. SHEA: Can I ask, what was the exhibit number for
13 that? Do you know?

14 Q. So you're saying you can document, and will you provide --
15 are you willing to provide this Court with documentation
16 showing one week where it says not hypomania, because hypomania
17 is different than mania, isn't it?

18 A. Yes.

19 Q. Hypomania doesn't qualify as mania, does it?

20 A. No.

21 THE COURT: Perhaps if you looked at Exhibit 110? Is
22 that what we all are referring to?

23 THE WITNESS: Well, there were two notes from
24 Dr. Kambampati. One was in October. The one with hypomania
25 was five months later in March, so those are not the same time

1 frame.

2 Q. Right. And hypomania wouldn't qualify, would it?

3 A. Wouldn't qualify for what?

4 Q. For Bipolar I.

5 A. If that's all he ever had in his life, no, but --

6 Q. But meaning -- in Exhibit 102 you wrote where you defined
7 what Bipolar I was. You said it was a week of consistent
8 mania, right?

9 A. That is not the DSM -- that's the -- I provided you with
10 the information from the DSM-V. I provided part of that
11 information in that report. There are other ways to diagnose
12 bipolar disorder other than one week.

13 Q. Well, let's be clear. In 2013, was the DSM-V active?

14 A. No, but the criteria were the same.

15 Q. Okay, but it was the DSM-IV then, right?

16 A. Yes.

17 Q. And just so there's no -- you know, I don't want to be
18 mistaken here. You wrote this report, didn't you?

19 A. Yes.

20 THE COURT: Which report?

21 MR. SHEA: Exhibit 102, which on Page 12, your Honor,
22 of Exhibit 102, I had him read into the record.

23 THE COURT: Let me just understand. You're relying on
24 110 as Dr. Kambampati's notes of a manic incident? Is that
25 what you're looking at?

1 THE WITNESS: That is one incident of a manic episode,
2 yes.

3 THE COURT: And can you tell from that how long that
4 lasted?

5 THE WITNESS: I'll revisit this, and if this is too
6 much information, then please tell me and I'll stop, but this
7 is Dr. Kambampati, a licensed psychiatrist, his treatment
8 provider who's documenting this as a manic episode.

9 THE COURT: Right.

10 THE WITNESS: I rely on his opinion as a medical
11 expert and a psychiatric expert. I don't need to personally
12 see one week of notes when his treating psychiatrist is
13 describing him as manic. As I indicated, from the DSM-V
14 criteria, it does not require one week of symptoms. I can't be
15 any more explicit than that.

16 THE COURT: Okay, so that's his position.

17 Q. Well, okay, one, this is a note for one day, isn't it,
18 meaning Exhibit 110 is a note for one day, isn't it?

19 A. Yes.

20 Q. You don't even know how often Dr. Kambampati saw
21 Mr. Mahoney around that time period, do you?

22 A. Specifically I can't state, but I was involved in this
23 situation. I was there. I know what happened.

24 THE COURT: All right, all right, so based on your
25 knowledge, how long did this manic episode --

1 THE WITNESS: As I said, it lasted several weeks.

2 THE COURT: Thank you. Based on your personal
3 observation?

4 THE WITNESS: Yes.

5 Q. So with that, so you're willing to provide documentation
6 on either side of 10/24/12 that shows he was -- because they
7 have running notes for each day, right?

8 A. A psychiatrist doesn't write a note each day, no.

9 Q. Right, no, he doesn't. And how often does a psychiatrist
10 write a note?

11 A. I don't know.

12 Q. You don't know. Okay, fine. And so given you don't know
13 how often the psychiatrist writes the note, what would you
14 depend on for knowing that it was happening seven consecutive
15 days?

16 A. I depend on the fact that Dr. Kambampati, whose opinion I
17 respect and rely on as providing a reasonable degree of medical
18 certainty, that in his opinion, he was manic at the time.

19 Q. Okay, but let's be clear. You have brought Dr. Hoffman
20 over the rails for not requesting records. Now, all I'm saying
21 is, can you provide this Court with records on either side of
22 10/24/12 that show manic behavior by Mr. Mahoney that spans
23 seven days? It can be 10/17 to 10/24 or 10/24 to 10/31 or
24 something in between, okay, but can you provide those records?
25 You have access to them, correct?

1 A. I don't know if I could provide those records or not, but,
2 again, it does not require seven days, so I'm not sure what
3 exactly the relevance of this question is.

4 Q. Well, the relevance is based on your own writing on
5 Exhibit 102.

6 A. Well, I didn't write the DSM-IV. Simply because I left a
7 few words out of the actual -- I don't -- as you can see,
8 there's a lot of information from DSM about bipolar disorder I
9 don't include there.

10 Q. So then what you're acknowledging here is that when you
11 write a definition of the major mental illness that is the
12 basis for holding this man, and when you write that, sometimes
13 you just leave a few words out? You can't be responsible for
14 leaving a few words out? Is that your testimony just now?

15 A. My testimony is, I did not believe that specifier was
16 relevant at that point in time; but Dr. Hoffman has now made
17 the one-week situation significant, so I'm pointing it out
18 today that that's not required.

19 Q. Sir, again --

20 THE COURT: You know, asked and answered. Let's move
21 on.

22 Q. I'm going to place in front of you --

23 MR. SHEA: I don't know if it's marked as an exhibit
24 or not, your Honor. If it's not, I'll make this an exhibit.

25 MR. CALLAHAN: Just to help us along, it's Exhibit 134

1 at Tab 20, about two pages in, your Honor, at Bates No. 2288.

2 MR. SHEA: Thank you.

3 Q. So what I've placed before you is a decision from the
4 Commonwealth of Massachusetts, the Department of Mental Health.
5 On the back, the signature page, it's Dominic Gervasi, the
6 hearing officer, and it's dated October 24, 2016.

7 Now, you've said that the Commonwealth made its
8 decision without having records and essentially said that that
9 was highly unprofessional. Is that a fair summation?

10 A. No.

11 Q. Okay. Well, let's go through the hearing officer's
12 decision. So they track -- on Paragraph No. 2 they have
13 Mr. Mahoney's medical history, correct?

14 MR. CALLAHAN: Objection. Mischaracterizes the
15 document.

16 Q. Well, the document is the decision --

17 THE COURT: No, I can read. The document speaks for
18 itself. But, you know, you criticized Mr. Shea for jumping up
19 every time. We won't finish this. So it speaks for itself.

20 Q. Doesn't Paragraph 2 -- BEM is Brian Mahoney -- talks about
21 damage to his eardrum, a work-related injury from a 53-foot
22 fall, correct?

23 A. Yes.

24 Q. So they had some medical records.

25 MR. CALLAHAN: Objection.

1 THE COURT: Overruled.

2 Q. Then Paragraph 4, they had records from Mass. General
3 Hospital, a treating psychiatrist, Dr. Martinez, correct? I
4 don't know if that's a record from Mass. General or somebody
5 referring to a record from Mass. General.

6 A. They have a comment about Mass. General there.

7 Q. Okay. And they have a specific doctor listed, correct?

8 A. Yes.

9 Q. And they say that Mr. Mahoney sought treatment for his
10 fast speech and demeanor, correct?

11 A. Yes.

12 Q. Then they have a note on the Avis Goodwin Health Center
13 from December, 2004, to December, 2010, right?

14 A. Again, this could have been taken from my risk panel
15 report, or they could have had that actual note. I have no way
16 of knowing.

17 Q. Right.

18 A. The front page, the list of exhibits shows the records
19 that they have, and there's nothing there from Avis Goodwin, so
20 I'm assuming they're taking that from my report.

21 Q. Okay. But it says "Exhibit 18" at the end of that,
22 correct?

23 A. And that is a letter.

24 Q. I'm just saying, "BEM was prescribed medication for
25 anxiety and attention deficit hyperactivity disorder,

1 Exhibit 18." Isn't that what it says?

2 A. Yes, and Exhibit 18 is a letter to the hearing officer.
3 That's not a medical record.

4 Q. Okay. And then they reference his treatment at MCI
5 Concord, correct?

6 A. That's also taken from my report, which is No. 19.

7 Q. Okay. But they're referencing different treatment he's
8 had, correct?

9 A. They're referencing the treatment that I referenced that
10 he had had.

11 Q. Okay. Now, as to the Commonwealth, when you heard of
12 Dr. Hoffman's -- well, they held the hearing, the fair hearing
13 at Devens, didn't they?

14 A. Yes.

15 Q. So he literally came to your turf or your hospital. So
16 did you go to greet him?

17 A. I didn't even know he was there.

18 Q. Okay. Well, wait a second. I mean, I know from my
19 experience, it ain't that easy to get in. So when, like, you
20 can see in the reference -- and, Judge, you can read it in the
21 transcript -- that they had to delay this hearing a few times
22 because they had trouble getting approval to have a microphone,
23 approval to have all the things they needed to conduct the
24 hearing. So there's certainly a process for them being allowed
25 into the institution, correct?

1 A. Yes.

2 Q. And they were in contact with the social worker who
3 works -- I forget her last name. Tamika is the first name,
4 correct? They were in touch with her arranging these things,
5 right?

6 A. I don't know who they arranged those things with.

7 Q. All right, but you knew they had phone contact with her.
8 You referenced that one phone log, right?

9 A. Yes.

10 Q. So at any point did you call Dr. Hoffman?

11 A. As I said, this entire process was completed before I
12 became aware of Dr. Hoffman, so, no, I've never called
13 Dr. Hoffman.

14 Q. Well, because the letters for Mr. Mahoney from the DMH
15 have to go through the social worker, right?

16 A. No.

17 Q. Are you saying that you were unaware or that the
18 institution was unaware? Are you saying that no doctor at
19 Devens knew that the Commonwealth of Massachusetts was holding
20 a fair hearing in the Devens facility?

21 A. I'm saying that I did not know that.

22 Q. And you're saying that you never called him, correct?

23 A. That's correct.

24 (Pause.)

25 Q. Now, are you still the acting director of clinical

1 training?

2 A. No.

3 Q. When did you give up that position?

4 A. It was when we hired a permanent training director. I
5 don't know exactly. A while, several years, at least three
6 years.

7 Q. Are you still chair of the Risk Assessment Panel?

8 A. Yes.

9 Q. And you have been the chair of that since 2006?

10 A. Yes.

11 Q. Okay. And does that involve competency evaluations?

12 A. No.

13 Q. And you are also a forensic psychologist there, correct?

14 A. Yes.

15 Q. So you wear many hats or you've worn many hats, right?

16 A. Yes.

17 Q. Now, I'm working off an old CV of yours, but when is the
18 last training you attended?

19 A. Last year, last summer.

20 Q. And what was it in?

21 A. It was in the use of the HCR-20 Version 3.

22 Q. I noticed that in your last three risk assessments for
23 Mr. Mahoney, you didn't use any of those tools. Is that fair
24 to say?

25 A. Yes.

1 Q. Now, these incidents you've said Mr. Mahoney has had, when
2 he is placed -- when he's found guilty and removed and put into
3 a locked unit, he's put into a locked unit for what, 23 hours a
4 day?

5 A. If he's on the locked unit, yes, that's correct.

6 Q. Okay. And if they believe that he might harm himself,
7 they'll strip him naked, right?

8 A. Well, no. They'll give him a suicide watch smock, a gown
9 to wear. He's not naked.

10 Q. Okay. And he's put there -- I mean, for instance, for
11 his, quote "threat to staff" that you said happened in
12 November, he was then put in isolation for 30 days, right?

13 A. Yes.

14 Q. And is it fair to say that that is probably not helpful
15 for someone if you believe they have bipolar disorder?

16 A. It varies. Some people's symptoms improve with being
17 removed from situations; some people's symptoms worsen.

18 THE COURT: Did you give him medicine during those
19 30 days?

20 THE WITNESS: If he was willing to take it, yes, and I
21 believe he took it sporadically during that time, yes.

22 THE COURT: You would know one way or another, right?

23 THE WITNESS: Yes. He was receiving Seroquel during
24 that time. He wasn't taking the full dose by his choice, but
25 he was receiving it.

1 Q. Well, when you're saying -- I mean, you're testifying
2 under oath in a Federal Court. First you said sporadically,
3 and now you kind of hedged. Do you have records and have you
4 reviewed the records of whether he was taking his medication on
5 a daily basis while he was placed in isolation for 23 hours a
6 day?

7 A. Yes.

8 Q. And you can definitively say that he was taking his
9 medication or wasn't taking his medication?

10 A. There were periods of time where he was taking the
11 medication and periods of time where he wasn't.

12 THE COURT: During that 30 days?

13 THE WITNESS: Yes.

14 Q. And you have access to those records?

15 A. Yes.

16 Q. Did you bring those with you today?

17 A. No.

18 THE COURT: Well, let me ask you this: After he got
19 out of the 30 days with the sporadic taking of medications, had
20 his, what would you call it, mood improved?

21 THE WITNESS: Yes. His mood is improved since he's
22 been back on the medication.

23 THE COURT: So when he came out of the 30-day stint,
24 he was more compliant?

25 THE WITNESS: Yes, and we moved him back to an open

1 unit, and he's much better now, yes.

2 Q. Now, 8/24 you made the decision he could safely be
3 released to a structured environment, a structured house,
4 right? What is it, a --

5 A. Conditional release to some kind of structured facility,
6 yes.

7 Q. Okay, something more than a halfway house?

8 A. A halfway house would be sufficient.

9 MR. CALLAHAN: Did you say 8/24?

10 MR. SHEA: I believe so.

11 THE WITNESS: I believe it was -- well, we risk
12 paneled him at the end of August, and we issued the report in
13 October.

14 Q. Okay, but the risk panel was on 8/24?

15 A. I thought it was 8/30, but either way, it's close enough,
16 yeah.

17 Q. And his mother died on what, 8/26?

18 A. Yes. His mother died just a few days before we saw him,
19 and I gave him -- you know, I spoke to him about it. I
20 realized this had happened and that this was probably maybe not
21 the most ideal time to hold the risk panel, and he indicated
22 that he would prefer to go ahead and talk with us that day.

23 Q. Now, his mother was the only real parental figure in his
24 life, correct?

25 A. Yes.

1 Q. And his father had been incarcerated and then committed
2 suicide, right?

3 A. That's right.

4 Q. And so it would be fair to say that she's a significant
5 figure in his life?

6 A. Absolutely, yes.

7 Q. And you're saying that at some point after that, he
8 also -- that time period is consistent with when he started --
9 somewhat after that is when he starts to deteriorate as well,
10 correct?

11 A. Yes, he deteriorated after that.

12 Q. And he had had a desire to go to the funeral, right?

13 A. Yes.

14 Q. And he wasn't able to go to the funeral, was he?

15 A. No.

16 Q. And this is at the same time that he's been told that he
17 doesn't have Bipolar I by Dr. Hoffman, right?

18 A. Yes.

19 Q. And so here is a man who's been locked up six years. His
20 mother has passed and he can't go to her funeral, and it
21 appears to him, reasonably, that he is being held illegally
22 because he doesn't suffer from a major mental illness, right?

23 A. That's his perception at this point. That wasn't what he
24 communicated to me at the time of the risk panel, and in fact
25 after that risk panel, we recommended him to be released.

1 Q. But the point is that you could see why he might -- like,
2 a regular person, someone without any mental health issues,
3 might be a little upset?

4 A. Sure.

5 Q. And so to see that Mr. Mahoney gets upset under these set
6 of circumstances in this time period is not strange, is it?

7 A. Well, there was -- I mean, you're talking about the end of
8 August and then November when he's getting all upset. I
9 would -- the situation you're describing to me makes more sense
10 around August or September. I believe the reason -- in my
11 opinion, the reason he deteriorated was because of the
12 information that was provided by Dr. Hoffman.

13 Q. But the fair hearing with Dr. Hoffman is in January 26 --
14 oh, that's the -- I'm sorry. September 28? Yes, so it was
15 September 28 that he had the hearing with Dr. Hoffman, right?

16 A. A month later, yes.

17 Q. Okay. And so you believe that that's more responsible?

18 A. Yes.

19 Q. But why can't it be both things? That's all I'm trying to
20 say.

21 A. It could be both things.

22 Q. I mean, one could put both things together, correct?

23 A. Yes.

24 Q. And what's been marked as a defense exhibit, which is from
25 I think 12/24, so he writes that shortly after he's gotten out

1 of isolation, right, the letter saying he doesn't want to --
2 Exhibit 143. Oh, it's on December 15. So if you know, is he
3 still in isolation at this point or not?

4 A. Yes, he was. It's from that unit.

5 Q. Okay. And so here's a guy who you say is sporadically
6 taking his medication, and he's in isolation 23 hours a day
7 suffering from major mental illness, and he writes a pretty
8 lucid -- I know you don't agree with him not wanting treatment,
9 but he writes a pretty lucid note, doesn't he?

10 A. Yes. I didn't argue that it wasn't lucid.

11 Q. Okay. Well, it's also -- it doesn't show signs of mania,
12 correct?

13 A. I mean, I can't tell from a note.

14 Q. But, I mean, he's not name-calling, right?

15 A. No. He wasn't disrespectful.

16 Q. And he's not grandiose?

17 A. It's indicative of a very poor decision, given the fact
18 that he was recommended for conditional release at that point
19 in time.

20 Q. But don't you think he thinks you're making poor decisions
21 that keep him locked up, right?

22 A. We weren't trying to keep him locked up at that point in
23 time. We were trying to get him out.

24 Q. But historically what Mr. Mahoney reacts against is what
25 he perceives as institutional injustices; isn't that fair?

1 A. He has reacted against significant others, other people in
2 the community, other inmates, other staff --

3 Q. Wait.

4 MR. CALLAHAN: Objection, your Honor. Can he finish?

5 THE COURT: Yes, finish.

6 A. So he's --

7 (Discussion off the record between attorneys.)

8 A. I'm sorry. Could you repeat the question.

9 Q. Well, look, so you've decided to say he was violent
10 against significant others. Document that for me.

11 A. It is what was established during these commitment
12 hearings. I don't have the paperwork in front of me.

13 Q. Well, you just decided to testify to it in Federal Court
14 at a hearing regarding whether he's a danger to the community,
15 so why don't you spell out what it was.

16 A. He had, I believe, six restraining orders placed against
17 him by women in the community, and he assaulted one --

18 Q. No --

19 MR. CALLAHAN: Can he finish the answer to the
20 question before the next question?

21 THE COURT: Yes.

22 A. He was arrested and convicted for assault with attempt to
23 rape with a knife. That is evidence of violence towards
24 significant others, in my opinion.

25 Q. Well, wait. Okay, was the woman in 1983 -- so the assault

1 with intent to rape, what was the year?

2 A. 1983.

3 Q. Okay. How long ago was that?

4 A. Thirty years.

5 Q. Okay. Was it a significant other?

6 A. That's my understanding, yes.

7 Q. And your understanding based on what?

8 A. My review of his criminal history.

9 Q. But you haven't read the police report, correct?

10 A. I don't recall.

11 Q. Well, no one could even find the trial transcript the last
12 hearing we were at. Now, the restraining orders, those people
13 can get those for ten days without Mr. Mahoney even being
14 present, correct?

15 A. I don't know.

16 Q. Well, you're testifying that those are the basis for what
17 makes him violent. The allegation doesn't even have to be of
18 violence, does it, to get a restraining order?

19 A. I'm not testifying that that's my basis for violence. You
20 had asked me a question about his periods of acting out, and I
21 made that statement in response to that question.

22 Q. Okay. So did you ever read a single one of the affidavits
23 filed by the women in support of the restraining orders?

24 A. I don't recall.

25 Q. Do you know if any of those restraining orders went beyond

1 the ten-day period in which it is granted without the subject
2 of the restraining order even being present?

3 A. I don't know.

4 Q. Okay. But you don't know either of those significant
5 things, but you are using them in your testimony here to say
6 that that's part of your evaluation for what makes him
7 dangerous, correct?

8 A. Again, that was not the statement I made in my answer. My
9 response was in response to a question from you regarding what
10 has made him act out historically.

11 Q. Within the institution, since he's been locked up since
12 2010, when he was upset in the New Hampshire correctional
13 facility, it's that he was not being given his Seroquel,
14 correct?

15 A. That was one incident, yes.

16 Q. Right, but that's what kicked off the incident, correct?

17 A. I'd honestly have to look at that specifically. I don't
18 remember the specifics of that incident.

19 Q. Okay. Then the next incident in New Hampshire is, he's
20 taking off his shirt because someone had struck him with a
21 chair during the Seroquel incident, and he's showing the
22 correctional officer that "Here I am in isolation now, and I'm
23 the guy that got hit with the chair," right?

24 A. I believe that's Mr. Mahoney's self-report. I've never
25 seen any documentation consistent with that.

1 Q. Well, there's documentation that he got hit with the chair
2 three days before he's taking off his shirt showing them the
3 very shoulder that got hit with the chair.

4 THE COURT: When are we talking about?

5 MR. SHEA: We're talking about Stafford County,
6 New Hampshire.

7 THE COURT: Oh, this is way back?

8 MR. SHEA: Yes, but it's to show -- the point I am
9 trying to make is that Mr. Mahoney's agitation is usually based
10 on his idea that he has been treated unfairly institutionally,
11 and so that when we continue to lock him up --

12 THE COURT: All right, well, just ask him that
13 question.

14 Q. So the thing is, currently the basis for continuing to
15 lock this man up, going on seven years now, is that he reacts
16 negatively to therapists, correctional officers taking apples
17 out of his cell, correct?

18 A. No, that is not the basis.

19 Q. Those are the most recent events, aren't they? What is
20 the one event that has taken place since the report in August,
21 2016, besides not taking the medication, which you say it's not
22 court ordered so he has the right not to take it? So what is
23 the one event --

24 THE COURT: Is it your position I can court order it?

25 MR. SHEA: I'm not saying you could court order it,

1 but I'm working off his --

2 THE COURT: He seems to do so well on the medication,
3 I'm just wondering whether I should.

4 MR. SHEA: I'm just trying to make the point that
5 that's not a basis for finding --

6 THE COURT: Have you ever seen a judge order the
7 taking of the medication?

8 THE WITNESS: Many times.

9 THE COURT: Even while they're in Fort Devens?

10 THE WITNESS: Oh, yes.

11 Q. So between late August, 2016, when you had the meeting,
12 then there was the finding I guess in October that he could be
13 released to a structured environment like a halfway house, what
14 is the one incident that took place since then that changed the
15 diagnosis?

16 A. I've never changed my diagnosis.

17 Q. Well, not diagnosis, changed your saying he's too
18 dangerous to be released now. That is a change.

19 A. There are two incidents. One was threatening his
20 treatment provider, and the other was sending me a letter
21 saying that he will never comply with any release conditions
22 regardless of what we put in place.

23 Q. Well, first, the treatment provider was one of the
24 clinicians he's upset with for holding him on what he considers
25 a false diagnosis, right?

1 A. I don't know that, no.

2 Q. You don't think that Mr. Mahoney has been very clear that
3 he doesn't think you're telling the truth, and the others
4 aren't accurate in assessing his mental health problem? That
5 hasn't come across?

6 A. You're asking me two different questions.

7 Q. Okay, well, let me ask you that one then. I'm asking you,
8 isn't it clear to you that Mr. Mahoney feels that yourself and
9 other psychologists at the institution have unfairly labeled
10 him with Bipolar I?

11 A. That's his opinion subsequent to Dr. Hoffman's evaluation,
12 yes.

13 Q. And you also could see that institutionally, you know,
14 there had been other times besides Dr. Kissin where he was
15 considered a Bipolar II, correct?

16 A. Other times -- I'm sorry, could you repeat the question.

17 Q. Sure. That other doctors had found him to be Bipolar II?

18 A. Yes.

19 Q. Right, at Devens?

20 A. Yes.

21 Q. And not just Dr. Kissin, correct?

22 A. I'm not aware of -- there's Dr. Kazim and Dr. Kissin.
23 Those are the only two I'm aware of.

24 Q. Okay. And basically if it's Bipolar II, the Court
25 couldn't be holding him at Devens, meaning he wouldn't have the

1 major mental illness that's the qualifier to get here to even
2 determine dangerousness, right?

3 A. That's my belief, yes.

4 Q. So it's a critical finding, the difference between
5 Bipolar I and Bipolar II? That's fair, isn't it?

6 A. Yes.

7 THE COURT: And, though, and is that also true if it's
8 bipolar not otherwise specified?

9 THE WITNESS: No. That's a major mental illness, a
10 major mental disease or defect which would qualify for civil
11 commitment.

12 Q. Now, the thing with bipolar otherwise unspecified, or
13 whatever, is it fair to say that that is because the
14 individual, not specifically Mr. Mahoney -- I'm talking in
15 generalities -- that the individual doesn't meet all of the
16 criteria under the definition?

17 A. Well, you don't have to meet all the criteria, but what it
18 would mean -- I mean, these diagnoses are categories that
19 mental health professionals have created to try to place
20 everyone who has certain conditions into that certain subgroup.
21 People are complex. People are idiosyncratic. Not everyone
22 fits. And that's basically why you would use that diagnosis.
23 But it's still mania.

24 Q. But it's an attempt to capture people who may not fit the
25 full definition, meaning the checklist; is that fair?

1 A. Yes. There's something about that individual which would
2 be different.

3 Q. And is it fair to say then it's more subjective, meaning
4 it's somewhat based on the particular practitioner's
5 observations?

6 A. All of diagnoses are subjective and based on the
7 individual's observations.

8 Q. But at least if you're working from, say, a formula, a
9 checklist, you have to have this symptom, that symptom, there's
10 a uniformity in what symptoms are being applied by the
11 different practitioners, correct?

12 A. There's a uniformity to the presentation of the patient,
13 not to the criteria that are being applied by the evaluator.

14 Q. But meaning, though, if someone was found with Bipolar I
15 specified, they would have met the DSM-IV and now DSM-V
16 definition of bipolar disorder, right?

17 A. Of Bipolar I disorder, yes.

18 Q. Yes. Bipolar I unspecified is that they don't meet all of
19 the definitions?

20 A. It may be that they don't meet all of the definition. It
21 may be that they present with other symptoms which are not
22 characteristic of the disorder, meaning that they meet all
23 those criteria plus they have a bunch of other things going on
24 which aren't typical. So it can go either way.

25 Q. Now, here's a document. You had mentioned that Dr. Kazim

1 had said Bipolar II disorder?

2 A. Yes.

3 Q. But also signed onto that, or at least his name is on
4 there, is Dr. Gorham, the psychologist, correct?

5 A. Yes.

6 Q. So it appears that at some point in time, date of the
7 treatment team, 2015, they were finding Bipolar II?

8 A. That was their working diagnosis, yes.

9 Q. So the treatment team in November of 2015 had found him to
10 have Bipolar II. So what I'm curious about --

11 MR. CALLAHAN: Objection.

12 THE COURT: What document is that?

13 MR. SHEA: I'll put it into evidence. I'm not sure
14 which --

15 THE COURT: I'm not sure I have that.

16 Q. So what I'm curious about is, so if you know that
17 Bipolar II isn't sufficient to commit Mr. Mahoney to Devens,
18 and then the treatment team makes a finding in November, 2015,
19 that he has Bipolar II, the very diagnosis that wouldn't allow
20 for his commitment to your institution, is any paperwork or
21 anything generated to the prosecutor's office, to the Judge, to
22 Mr. Mahoney's counsel?

23 A. No.

24 THE COURT: When did the working diagnosis shift from
25 Bipolar II to Bipolar I?

1 THE WITNESS: My understanding from conversations with
2 Dr. Gorham is that that was never the diagnosis. The diagnosis
3 was bipolar disorder not otherwise specified. That diagnosis
4 was Dr. Kazim's diagnosis, not the treatment team diagnosis.

5 Q. Well, doesn't the document say it's the treatment team?
6 Doesn't the document say "treatment team"?

7 A. I don't have the document.

8 Q. Oh. "Behavioral health treatment plan worksheet,"
9 correct?

10 A. Yes. That's just a worksheet.

11 Q. Okay, but it lists the psychologist, Dr. Gorham, right?

12 A. Yes.

13 Q. The psychiatrist, Dr. Kazim, right?

14 A. Yes.

15 Q. The social worker, Tamika Finch-Hall, correct?

16 A. Yes.

17 Q. The nurse, J. Sweeney?

18 A. Yes.

19 Q. Recreational therapist, B. Carter?

20 A. Yes.

21 THE COURT: I mean, I can read it.

22 MR. SHEA: Okay.

23 THE COURT: Let's just --

24 (Defense Exhibit 3 received in evidence.)

25 Q. But the last thing I just want to say is, it also puts his

1 legal status on that very thing, 4246, right, meaning they list
2 that he's committed there --

3 A. Well, that's not a "they." One person types that sheet.
4 As you can see, there are no signatures. There's no -- I don't
5 know who prepared that exactly, but I explained to you what my
6 understanding of that situation was.

7 THE COURT: How are you doing timewise?

8 MR. SHEA: I think I can get there. I'll try and
9 leave a little time for the government.

10 Q. Do you recall testifying at a prior hearing before this
11 Court, before Judge Saris?

12 A. Yes.

13 Q. And do you recall testifying when you were asked, "And the
14 fact is, his first diagnosis --"

15 MR. CALLAHAN: Page?

16 MR. SHEA: Oh, sure. Sorry.

17 (Discussion off the record between attorneys.)

18 Q. You were asked, "The fact is, his first diagnosis of
19 Bipolar I came only after he had been at Devens for a
20 substantial period of time?" You answered, "I believe that's
21 correct, yes." That was your answer back in 2014, correct?

22 A. I can't see the transcript, but I'll take your word for
23 it.

24 Q. Don't take my word. Read it to yourself, please.

25 (Witness examining transcript.)

1 A. Yes, that was my testimony.

2 Q. That was your testimony.

3 A. Well, I don't know who the witness is.

4 Q. Sure. I can show you at the beginning.

5 (Witness examining transcript.)

6 A. All right, yes, that was my testimony.

7 Q. That was your testimony? Now, you've also diagnosed
8 Mr. Mahoney with antisocial personality disorder, correct?

9 A. Yes.

10 Q. That's consistent with the finding of Dr. Hoffman, right?

11 A. Yes.

12 Q. And is it fair to say that yours was the first diagnosis
13 that you're aware of of that disorder?

14 A. I honestly don't -- I'm not sure.

15 Q. Okay. Well, do you recall when you were asked, "Is it
16 fair to say that your diagnosis of full-blown antisocial
17 personality disorder was the first diagnosis that you're aware
18 of for that disorder?" you answered, "Yes, the actual disorder,
19 that's correct"? Do you have any memory of that?

20 A. Yes. I recall now that before that he had been diagnosed
21 with anti- -- I think personality disorder with antisocial
22 features.

23 Q. Okay. Now, typically personality disorders aren't
24 sufficient for commitment, right?

25 A. Apart from sexually dangerous persons, yes, that's true.

1 Q. Okay. And there was no petition to commit Mr. Mahoney as
2 a sexually dangerous person, correct?

3 A. No.

4 Q. And so Bipolar I is a disorder that allows for the
5 commitment of Mr. Mahoney, correct?

6 A. Well, I should specify that the basis for commitment is
7 federal statute which says "severe mental disease or defect."
8 That's left to the trier of fact to decide what diagnosis, so,
9 in my opinion, Bipolar II would not be sufficient. Is it
10 possible that a court could find differently? Absolutely. So,
11 in my opinion, I would not file a petition to civilly commit
12 based on a condition of antisocial personality disorder.

13 Q. Okay, so just so we're clear, you wouldn't file a petition
14 to commit under antisocial personality disorder, right?

15 A. Alone, no.

16 Q. And it's unlikely you would do so under Bipolar II?

17 A. That's correct, yes.

18 Q. Now, antisocial personality disorder requires that the
19 person kind of not have any empathy or feel badly about their
20 conduct, correct?

21 A. It doesn't require that. That is one of the -- it can be
22 a symptom of antisocial personality disorder.

23 Q. Mr. Mahoney apologizes, correct? Not always but he does,
24 okay?

25 A. Yes.

1 Q. One of the things for antisocial personality disorder --
2 and I know there's some debate that you had before on this --
3 usually requires some kind of juvenile record by the age of 15,
4 correct?

5 A. No. It requires disregard for and violation of the rights
6 of others prior to age 15. It doesn't require a juvenile
7 record.

8 Q. Okay. So Mr. Mahoney's first record of conviction is at
9 the age of 19, right?

10 A. I don't recall, but that sounds right.

11 Q. Okay. So that's certainly well beyond the age of 15,
12 right?

13 A. Yes.

14 Q. Significantly, right? It's from juvenile to adult, right?

15 A. Yes.

16 Q. Well, now, did you ever get his educational records?

17 THE COURT: Why are we going into this, since it isn't
18 the basis for the major mental disorder?

19 MR. SHEA: Because his credibility is in question.

20 THE COURT: I know, but both Hoffman and he agreed on
21 this, right?

22 MR. SHEA: Right, but they both could be wrong about
23 that too. I mean --

24 THE COURT: Fine. Just it's not the basis for the
25 commitment.

1 MR. SHEA: I agree. I guess, if I'm clearer, frankly,
2 I don't think any of these supposed experts are credible. They
3 seem to shift with the wind of what they think they're required
4 to do is my opinion. No, but so I'm trying to attack his
5 credibility on each of his diagnoses.

6 THE COURT: And that's relevant, fine, but it's taking
7 forever on an issue that's not the basis for what I found
8 before or anybody has found now as the basis for the
9 commitment, so you're welcome to go through it, but we --

10 MR. SHEA: I'm not going to spend a lot of time on it.

11 Q. All right, so you don't have any juvenile convictions, you
12 don't have any educational records, and you're saying that he
13 qualifies for antisocial personality disorder. What is the
14 basis -- how do you deal with that youth and the fact that
15 there doesn't seem to be sufficient documentation of any
16 problems in his youth?

17 A. I testified during his hearing as to the foundation for
18 that. I honestly can't recall. It wasn't an issue that I
19 reviewed for this hearing. I would have to go back and review
20 all the records again to answer that.

21 Q. Well, it appears that you said that because he had told
22 you he engaged in combative or fights while he was in school,
23 none of which, there's no documentation of any suspensions or
24 any criminal charges, but that he had had fights in school,
25 that that was sufficient. Does that seem right?

1 A. Self-report would be sufficient, yes.

2 Q. But, really, is fighting in school sufficient to make
3 someone have an antisocial personality disorder?

4 A. Being combative and fighting? Yes.

5 Q. Well, how is combative --

6 A. Well, no, it's not sufficient. That's sufficient to
7 indicate a history of disregard for and violation of the rights
8 of others prior to the age 15. You would have to have a whole
9 lot more than that to meet criteria for antisocial personality
10 disorder.

11 Q. I mean, you know Mr. Mahoney grew up in Charlestown,
12 right? And it's not the Charlestown we know now, right,
13 correct?

14 A. Yes. I don't know --

15 THE COURT: What do you mean by that?

16 MR. SHEA: Huh? It was a little more rough-and-tumble.

17 THE COURT: Oh, back then.

18 MR. SHEA: Yes.

19 THE COURT: Not the gentrified location.

20 MR. SHEA: I'm not saying back then. I live in a
21 gentrified community myself, so -- but, I mean -- but I will
22 say, when I was growing up, you could have a fight; it didn't
23 mean you had antisocial personality disorder, it didn't mean
24 you went to court.

25 Q. Mr. Mahoney is 58 years old. I mean, do you take into

1 account that his father is in jail for murder, he's living in
2 Charlestown back when it's a rougher community, and the kids
3 might fight in school, and you use that as the basis for saying
4 that's enough as a juvenile to get antisocial personality
5 disorder?

6 MR. CALLAHAN: Objection. That mischaracterizes the
7 witness's testimony.

8 A. I just said that, no, that is not nearly enough.

9 Q. Okay, so point to --

10 THE COURT: He just said he didn't review the records
11 for this. I mean --

12 Q. Right, but he self-reported that he had some fights in
13 school?

14 A. That's one criteria for antisocial personality disorder.
15 There are seven others.

16 Q. Yes, but it's a disqualifier usually if you don't have
17 something by the age of 15, and so --

18 A. And he did have something by the age of 15.

19 Q. And the only thing --

20 THE COURT: What was it?

21 THE WITNESS: It was a history of combativeness and
22 fighting.

23 Q. Which was only self-reported, right? That was your only
24 documentation?

25 A. That's correct.

1 Q. And it was self-reported that he had some fights in
2 school?

3 A. That's not what I stated, no.

4 Q. Well, what did you mean by combative?

5 THE COURT: So why don't you wrap up in about ten
6 minutes.

7 MR. SHEA: All right, fine.

8 Q. Another aspect of antisocial personality disorder, though,
9 is disregard for family, right, or for people close to you,
10 right?

11 A. No.

12 Q. Now, I'm going to show you -- and I guess we can group
13 these as an exhibit -- Federal Medical Center Devens gives out
14 certificates of achievement for people taking classes or
15 participating in things, correct?

16 A. Yes.

17 Q. And Mr. Mahoney has put together a significant amount of
18 these documents showing his participation, correct?

19 A. Yes. That was one of the reasons for our recommendation
20 for conditional release in August.

21 Q. And one of the things -- let's just take a few of them.
22 So the latest one was Microsoft Office computer, he completed
23 330 hours of study as of October 28, 2016, right?

24 A. If that's what it says, then, yes.

25 Q. Okay. And that means he's got to sit in the classroom for

1 those 330 hours, right?

2 A. I don't have any idea how they conduct those courses.

3 Q. Really?

4 A. No.

5 Q. Do you have any idea how they conduct even a single one of
6 these courses?

7 A. I don't know. I'd have to look through the entire stack.

8 Q. Sure.

9 (Witness examining documents.)

10 A. I'll point out that all of these fell within the time
11 frame that we recommended him for conditional release when he
12 was doing well, so I don't dismiss these as being relevant to
13 his stability.

14 Q. But he took other courses in 2015; he took other courses
15 in 2014, didn't he?

16 A. I'm not seeing anything from 2014 here, no.

17 Q. Meaning that's what we brought today because that's the
18 relevant time period we're dealing with now, but are you --
19 you've said that you're the person with access to all of his
20 records. Are you aware that he took numerous courses during
21 the entirety of his stay at Devens?

22 A. Yes. I've already testified that I mentioned that. It's
23 in my report.

24 Q. Well, the first question, the reason why you were looking
25 through --

1 THE COURT: And during that time period where he was
2 so successful in those classes, was he on the Seroquel?

3 THE WITNESS: Yes.

4 Q. And is he on Seroquel now?

5 A. Yes.

6 Q. And he's taking it at his own behest, even while he won't
7 meet with the treatment team, correct?

8 A. Yes.

9 Q. Now, you were looking through that stack --

10 THE COURT: Can I say this: Is that the standard
11 treatment for Bipolar I?

12 THE WITNESS: It is not, but he's not -- he's never
13 been willing to go back on the lithium, which showed benefit,
14 but they did manage with significant increases in his dosage of
15 Seroquel to control his symptoms.

16 THE COURT: So it's been effective?

17 THE WITNESS: It's typically used as an adjunct to
18 lithium or Depakote, but it has proven effective with him at a
19 high dose, really close to the maximum dose.

20 Q. What other disorders would it be prescribed for?

21 A. Psychosis.

22 Q. Could it be prescribed for ADHD?

23 A. No.

24 Q. Okay. Could it be prescribed for a personality disorder?

25 A. No. That would be chemical restraint. I mean, that's --

1 this is a mood-stabilizing antipsychotic medication. It's got
2 a pretty specific treatment profile, especially at the doses
3 that Mr. Mahoney takes it.

4 Q. Now, I originally placed those documents in front of you
5 again for you to see if you could tell us about how rigorous or
6 what it would require for him to participate in any of those
7 courses, whether you had any insight into any one of them.

8 A. No. This is mostly conducted by education. I know some
9 things about the mental health treatment groups, but strictly
10 educational stuff I don't really have much to do with. I mean,
11 there are topics that -- I mean, the fact that he complies with
12 them and does them is a positive indicator on his behalf, which
13 is why that was a factor in our opinion in August. I don't
14 disregard them or minimize them. I think they're important.

15 Q. Well, does it occur to you that he's doing -- you know,
16 some of them like the Food Truck is only six hours. Money
17 Smart is ten. Some are ten, but then the other is up to like
18 330 hours. He's taking others like Illness Management and
19 Recovery, that one is a 146-hour one; another one on computers.
20 Does it occur to you that there doesn't seem to be --

21 MR. SHEA: And that can be stapled and made one
22 exhibit.

23 THE COURT: Fine.

24 (Defense Exhibit 4 received in evidence.)

25 Q. Does it occur to you that he doesn't have a single

1 incident report or write-up for his entire stay at Devens for
2 anything involving these courses he takes?

3 A. That's not true. He had a significant incident in
4 education a couple of years ago where he ended up being locked
5 up for his behavior with the supervisor of education.

6 Q. But it wasn't during one of these courses, was it?

7 A. Not one of these, but --

8 Q. Sir, sir, it was he was in the library in the morning when
9 the person came in, right, and there were words exchanged?

10 A. As I indicated, he had an altercation in education.

11 Q. Not an altercation. I think it was called -- people
12 described it as loud. There was one report that described it
13 as loud on both sides. Of course, in these institutional
14 reports, sometimes one person sees it one way and another the
15 other, but it wasn't during one of these classes?

16 A. Well, to answer your question, yes, it occurred to me
17 because I recommended him for conditional release.

18 Q. Right, but how about just looking back? In 2014 --

19 THE COURT: And, again, what span of time would you
20 feel it was -- now that, in your view, there's been a reset,
21 what span of time would be for you sufficient to prove to you
22 that he could be compliant with medications? Six months, you
23 said?

24 THE WITNESS: That is what I said. I mean, there are
25 two issues. His compliance with treatment, I think it's more

1 than just medication; it's compliance with medication and
2 compliance with meeting with his psychologist on a regular
3 basis. There is a significant issue with regard to
4 Mr. Mahoney's report as to whether or not he'll comply with
5 release conditions, and it's difficult because --

6 THE COURT: Well, were you asking to keep him forever?

7 THE WITNESS: No, but --

8 THE COURT: All right, so what would be a
9 reasonable --

10 THE WITNESS: But I'm saying that less than a month
11 ago, two weeks ago in fact, he already told me -- I would want
12 at least six months of a period of time where he's not
13 communicating to other people that he's going to violate his
14 conditions when he gets out because simply saying "I'll do it"
15 has not proven in his history to be borne out.

16 Q. Actually, in his history, sir, let's do that just quick.
17 2009, Mass. General Hospital, he seeks out the treatment,
18 right? As far as you know, Mr. Mahoney determines that he's
19 having trouble with comporting himself, so he says, "You know
20 what? This is causing me trouble in my family or my life. I'm
21 going to go for some help." He goes to Mass. General Hospital,
22 right?

23 A. I mean, I don't know the specifics. I know he was told
24 that he had pressured speech and things like that. I don't
25 know --

1 Q. And he reported that he went to Mass. General. He's on
2 parole at the time. It's verified that he's getting treatment,
3 right?

4 A. Well, going to Mass. General on your own accord and being
5 on parole and going to Mass. General could be two different
6 things.

7 Q. Right, but it could be that he decided to go so he could
8 successfully --

9 A. It could be. It could also be that he was required to go.
10 I don't know.

11 Q. But you have no documentation he was required to go,
12 right?

13 A. I have no documentation one way or the other. That's my
14 answer.

15 Q. So did you seek the documents?

16 A. No.

17 Q. Okay. Now, as to New Hampshire, the outpatient place that
18 he went from 2004 to 2010, he's not on parole then. He goes by
19 himself, and for six years he goes there by himself because he
20 wants to help himself; isn't that right?

21 A. Again, I don't dispute that he went. I don't recall why
22 he was going exactly, whether he was on any kind of conditions.

23 THE COURT: He doesn't remember, so what's the next
24 question?

25 Q. Okay, but you looked at -- you have testified in this

1 court that unlike Dr. Hoffman, you reviewed the New Hampshire
2 notes, right?

3 A. Yes.

4 Q. Okay. And you can tell us that Mr. Mahoney went to that
5 place by himself. He wasn't court ordered there. Nothing in
6 the notes say he's court ordered, right?

7 A. I'm telling you I don't know. I would have to go back and
8 review the records.

9 Q. Okay, but you read these records, right?

10 A. At one point in time, I had read those records, yes.

11 Q. Is there anything in your memory to indicate that he was
12 court ordered and didn't go on his own? Is there any reason to
13 believe --

14 A. For treatment?

15 Q. Huh?

16 A. For treatment?

17 Q. Yes.

18 A. I'm not aware of that, no.

19 Q. Okay. And so for those six years, meaning your concern
20 here today is whether Mr. Mahoney will be compliant, yet what
21 you know is that for six years out there, he went on his own
22 without any involvement by any outside authority, apparently,
23 to get himself help.

24 A. Taking his medication is only one requirement of the
25 release conditions.

1 Q. Well, let's put it this way: They didn't just hand out
2 drugs at that outpatient place in New Hampshire, right? Does
3 anyone do that legally?

4 A. No.

5 Q. Okay. It's prescribed by a psychiatrist, isn't it?

6 A. Or a psychiatric nurse or a mid-level practitioner.

7 Q. And usually in conjunction with, you go there and have
8 therapy. It can vary from weekly to monthly, right?

9 A. That's not necessarily true. I mean, there are a lot of
10 people on medication who don't go to therapy.

11 Q. But this was a mental health group, right?

12 A. It doesn't make a difference. There are a lot of people
13 on medication that don't go to therapy.

14 Q. Do you have any reason to think they were just handing
15 Mr. Mahoney a big bottle of pills and sending him out the door?

16 A. I don't know what I said that would make you believe I
17 have any reason to doubt that.

18 (Discussion between Mr. Shea and Mr. Mahoney.)

19 Q. So he was going to the Goodwin Community Health Center; is
20 that your recollection?

21 THE COURT: I'm sorry. I've lost track. Is this
22 New Hampshire?

23 MR. SHEA: Yes, that's New Hampshire.

24 MR. CALLAHAN: Can I see the document counsel has
25 shown the witness, please.

1 THE COURT: You know what, just --

2 MR. MAHONEY: Well, I want him to answer the question.

3 THE COURT: No. He shows it to Mr. Callahan first.

4 (Discussion between Mr. Shea and Mr. Mahoney.)

5 MR. CALLAHAN: Thank you.

6 Q. All right, so does this refresh your recollection that he
7 went to the Goodwin Community Health Center?

8 (Witness examining document.)

9 A. Yes. I mean, I knew he went there. As I indicated, I
10 don't know -- I didn't recall exactly why he was going there.

11 Q. And he provided you records about his having gone there,
12 right?

13 A. Yes. It's documented in my reports when he went there,
14 what he was taking, what he was diagnosed with.

15 Q. Okay, but also that he was going on his own; that's what's
16 documented?

17 A. He was showing up for treatment regularly.

18 Q. Thank you. And that's from 2004 to 2010, and it's 2010
19 when --

20 MR. CALLAHAN: Objection. Objection, your Honor.
21 What was from 2004 to 2010?

22 MR. SHEA: Oh, his going to community health centers
23 right, or 2004 to 2009?

24 MR. MAHONEY: 2004 to 2010, twice a month.

25 THE COURT: And what meds was he taking back then?

1 Does anyone know?

2 MR. MAHONEY: I have the list right here, your Honor.

3 MR. SHEA: Hold.

4 MR. MAHONEY: Medications that you have to go,
5 Roxicodone, you have to go there.

6 MR. SHEA: I'll make it an exhibit so you'll know.

7 THE COURT: Okay, thank you.

8 (Defense Exhibit 5 received in evidence.)

9 Q. So that it appears under the timeline, given that
10 Mr. Mahoney finds himself in the court system as of 2010, that
11 the thing that interrupted his continuing with the community
12 mental health center was his incarceration, and then the
13 ensuing question of competency, and then the commitment; is
14 that fair to say?

15 A. Yes, absolutely.

16 Q. And it's fair to say that since that time, ranging over
17 six to the seventh year now, he hasn't had an opportunity to
18 show that he's willing to comply, meaning he hasn't been out to
19 prove himself?

20 A. He has not been out since that time.

21 THE COURT: It says here in this Community, "Rule out
22 Bipolar I disorder. Most recent episode manic MOD." I'm not
23 sure. So do you know whether that means they have ruled it out
24 or whether they need to rule it out?

25 THE WITNESS: It means it's a diagnosis that they're

1 considering.

2 THE COURT: It's one that they're considering?

3 THE WITNESS: Yes.

4 Q. Meaning they should rule it out or rule it in, but they
5 haven't reached a decision; is that fair?

6 A. Yes.

7 THE COURT: Okay, thank you.

8 MR. CALLAHAN: Your Honor, will the government have
9 some time? There's been a lot on cross that we'd like to
10 redirect on.

11 THE COURT: Well, are you done?

12 MR. SHEA: One second.

13 (Discussion between Mr. Shea and Mr. Mahoney.)

14 MR. SHEA: Yes. I'll stop.

15 THE COURT: Well, let me put it this way: Yes and no.
16 I'm walking out this door at 1:00 o'clock.

17 MR. CALLAHAN: I understand, your Honor, so I'll get
18 going and get right to it.

19 THE COURT: If not, we're coming back next week.
20 Monday morning look good for you?

21 MR. CALLAHAN: Sure, for the government it does, your
22 Honor.

23 MR. SHEA: I could do the morning, but I have to leave
24 by noon to get out to Westfield for my DNA expert by 2:00, so I
25 could do 9:00 to 12:00.

1 THE COURT: This has been like the never-ending
2 hearing.

3 MR. CALLAHAN: I think I'll be done before 1:00
4 o'clock with Dr. Channell.

5 THE COURT: I know, but then there's a recross. So,
6 you know, I'm just walking out the door at 1:00. I have to be
7 somewhere at 1:00, so I'll already be 10 or 15 minutes late.

8 MR. CALLAHAN: So let me get right to it then.

9 REDIRECT EXAMINATION BY MR. CALLAHAN:

10 Q. So, Dr. Channell, with respect to the October, 2012,
11 Dr. Kambampati "manic" note that you were referring to, did you
12 personally observe Mr. Mahoney at Devens during that time and
13 see manic symptoms?

14 A. Yes.

15 Q. The letter, in terms of Mr. Hoffman or Dr. Hoffman telling
16 anyone at Devens about his diagnosis of Mr. Mahoney not having
17 bipolar, does your name or is anyone's name at Devens on the
18 March 25, 2016 letter where Dr. Hoffman says that?

19 A. No. That was sent directly to Mr. Mahoney.

20 Q. It was sent to Mr. Mahoney. It was also sent to Mr. Shea,
21 right?

22 A. Yes.

23 Q. And it was cc'd to the DMH. Is there anyone from Bureau
24 of Prisons whose name is on this document from Dr. Hoffman?

25 A. No.

1 Q. If the Court wants to know what records -- you were asked
2 a lot about what records the Department of Mental Health had at
3 the time -- well, at least as of the date of the fair hearing,
4 right? We know at the time of Dr. Hoffman's conclusion he had
5 about 40 pages, right? Didn't he already testify to that?

6 A. Yes.

7 Q. In terms of the records from DMH, do you know that the
8 Court ordered DMH to turn over that record?

9 A. Yes.

10 Q. And do you know it's all here in Exhibit 134?

11 A. Yes.

12 Q. Much of it after the time during which Dr. Hoffman gave
13 his diagnosis, correct? So if the Court wants to know what was
14 provided, what they looked at at the fair hearing, it's all in
15 Exhibit 134, right?

16 A. It's my understanding.

17 Q. And there are no documents from Avis Goodwin there, right?

18 A. That's my understanding.

19 Q. Right. And if there are any other questions, that's the
20 place to look; is that fair?

21 A. Yes.

22 Q. You talked about incident reports Mr. Mahoney had
23 generated at his time in Devens. Do you recall testifying
24 about that in the first civil commitment hearings here in June
25 and August of 2014?

1 A. Yes.

2 Q. Were some of those incident reports, did they describe
3 aggression Mr. Mahoney demonstrated to other people outside of
4 his treatment --

5 THE COURT: You know, I remember what my opinion said.
6 I reread it before I came in here. Anything else?

7 MR. CALLAHAN: Yes.

8 Q. Let me ask you about this: You were shown Dr. Kazim's
9 note from November, 2015?

10 A. Yes.

11 Q. I want to show you -- and that's where there's this
12 Bipolar II disorder reference, correct?

13 A. Yes.

14 MR. CALLAHAN: May I approach, your Honor?

15 THE COURT: Yes.

16 MR. CALLAHAN: I'm going to show him Exhibit 145 which
17 I've just marked. I'll show it to counsel first. I only have
18 one copy of it. It's a treatment note, your Honor, dated
19 December, 2015, which is just several weeks after the document
20 that Mr. Shea put in front of Dr. Channell.

21 Q. What is Exhibit 145?

22 A. This is a Diagnostic and Care Level Formulation note.

23 Q. And what's the date of that note?

24 A. December 2, 2015.

25 Q. Where is that in reference to Dr. Kazim's note that you

1 were shown by Mr. Shea?

2 A. It would have been maybe a month later, yeah, a little
3 less.

4 Q. What's the diagnosis that's identified there by Dr. Gorham
5 in his treatment note?

6 A. "Other specified bipolar and related disorder, current
7 chronic initial with psychotic features, delusional ideation."

8 Q. Not Bipolar II, correct?

9 A. That's correct.

10 Q. And what does it say at the bottom?

11 A. "Reviewed by Gorham, Jonathan," Dr. Gorham.

12 Q. Part of the treatment team?

13 A. Yes.

14 MR. CALLAHAN: The government offers 145, your Honor.

15 THE COURT: All right.

16 (Exhibit 145 received in evidence.)

17 Q. I'd like to show you just one more treatment note,
18 Exhibit 141 in your binder. Can you identify what that is.

19 A. That's a Diagnostic and Care Level Formulation written by
20 Dr. Gorham dated December 20, 2016.

21 MR. CALLAHAN: The government offers 141 into
22 evidence, your Honor.

23 THE COURT: All right.

24 (Exhibit 141 received in evidence.)

25 Q. What's the diagnosis that Dr. Gorham provides at the

1 bottom of that Exhibit 141 at Page 3155?

2 A. "Other specified bipolar and related disorder, current
3 with psychotic features, delusional ideation, and antisocial
4 personality disorder."

5 Q. Is that a severe mental illness, Dr. Channell?

6 A. The "other specified bipolar" is, yes.

7 THE COURT: All right.

8 Q. And then --

9 MR. CALLAHAN: Your Honor, I really only have like two
10 minutes.

11 Q. Antisocial personality --

12 THE COURT: Excuse me. Will you have recross?

13 MR. SHEA: Right now I'm at two questions.

14 THE COURT: I literally have to walk out the door at
15 1:00 o'clock, so the question really comes at -- I don't know
16 whether, Dr. Channell, are you available Monday so we're not so
17 rushing this?

18 THE WITNESS: I'm not available Monday.

19 MR. CALLAHAN: I'll stop right now.

20 THE COURT: Okay. Anything?

21 MR. SHEA: Sure.

22 RE CROSS-EXAMINATION BY MR. SHEA:

23 Q. You just said that you could document -- that you yourself
24 in the same time period as Dr. Kambampati, I think it is, you
25 made observations of the manic episodes. Did you document

1 those anywhere?

2 A. Probably not, no.

3 Q. Do you have even a note --

4 THE COURT: All right, he said he didn't, so what's
5 the next question?

6 (Discussion off the record between attorneys.)

7 MR. CALLAHAN: It's not dated. It's an undated
8 envelope that someone typed.

9 MR. SHEA: Right, but it's from them.

10 MR. CALLAHAN: From when?

11 THE COURT: Do you object?

12 MR. CALLAHAN: I object, your Honor.

13 MR. SHEA: I'll get more documentation for it.

14 THE COURT: Okay.

15 Q. Just the last thing on that Kambampati stuff. Are you
16 willing to provide documentation to the Court showing manic
17 episodes in that time period for the weeks surrounding
18 Dr. Kambampati?

19 A. I will provide the Court any documentation the Court
20 wants.

21 THE COURT: Why don't I just leave it this way: Right
22 now you don't remember taking notes about it. Why don't you,
23 if you could go back and present those documents to the Court
24 or give them to the U.S. Attorney for Monday's hearing if you
25 see anything.

1 MR. SHEA: Can I get something too?

2 THE COURT: Of course, yes. I mean, but he'll share
3 it with you. I mean, you don't want him to share it directly.
4 He'll give it to you and then share --

5 THE WITNESS: If I could just say, I won't be into the
6 office until 6:00 o'clock Monday morning. I can send it then,
7 but that would be the earliest I'd be able --

8 THE COURT: That's okay. I'm not going to be deciding
9 it on Monday, so that's fine.

10 All right, anything else?

11 MR. SHEA: Fine.

12 THE COURT: Okay.

13 MR. CALLAHAN: Is Dr. Channell excused?

14 THE COURT: Yes, he is.

15 (Witness excused.)

16 THE COURT: I'll see you Monday morning. You'll make
17 a decision about whether Mr. Mahoney wants to testify?

18 MR. SHEA: Yes. The only thing, Judge, we had put
19 into evidence this disk of the fair hearing.

20 THE COURT: Yes.

21 MR. SHEA: And we're asking -- we don't want to take
22 up the Court's time playing it, but if the Court would agree to
23 listen to it --

24 THE COURT: I'll listen to it afterwards, but not
25 necessarily by Monday. What time Monday morning?

1 MR. SHEA: But before making a decision on the matter?

2 THE COURT: Yes. I'm not making a decision Monday
3 morning. I don't even know whether your client is going to
4 take the stand. Is he?

5 MR. SHEA: Honestly, I don't know, but part of --

6 THE COURT: You'll make a decision for Monday.

7 MR. SHEA: Yes.

8 THE COURT: Monday at 9:30, does that make sense? Was
9 that easier this morning?

10 MR. SHEA: Yes.

11 THE COURT: Because last time it was a little too -- I
12 wasn't sure I could get you in on time. Did you --

13 MR. SHEA: They kept him in Plymouth.

14 THE COURT: They kept him in Plymouth. Oh, so it's
15 easier. All right, we'll do 9:00 o'clock, okay.

16 MR. MAHONEY: So I can go back to Plymouth. If I have
17 to be here before 9:00, they said you have to go to the nearest
18 facilities.

19 THE COURT: What do you prefer?

20 MR. SHEA: Do you like Plymouth?

21 MR. MAHONEY: Whatever the Court. I'll go back to
22 Devens if the Court would allow me, if I --

23 THE COURT: Well, I don't know over the weekend what
24 makes sense. I'll leave it up to them. I'll set it at 9:30,
25 and whatever will be will be.

1 MR. SHEA: Sounds fine.

2 THE COURT: Because it just didn't work last time from
3 Devens at 9:00. We just all sat here waiting.

4 All right, and then my goal is that -- either he'll
5 testify or not. Make a decision by then. Oral argument, and
6 I'll take it under advisement. At that point I'll listen to
7 the tape. And if you want to submit post-hearing briefs,
8 you're welcome to. If you want to just argue, fine too. Okay?
9 Thank you.

10 MR. CALLAHAN: Thank you.

11 THE COURT: Have a nice weekend.

12 THE CLERK: All rise.

13 (Adjourned, 12:59 p.m.)
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter,
do hereby certify that the foregoing transcript, Pages 2-1
through 2-125 inclusive, was recorded by me stenographically at
the time and place aforesaid in Civil Action No. 15-11530-PBS,
United States of America v. Brian Mahoney, and thereafter by me
reduced to typewriting and is a true and accurate record of the
proceedings.

Dated this 16th day of February, 2017.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER